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HUMAN RIGHTS COMMITTEE

Fifty-third session

SUMMARY RECORD OF THE 1390th MEETING

Held at Headquarters, New York,
on Tuesday, 21 March 1995, at 3 p.m.

Chairman: Mr. AGUILAR

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

95-80464 (E)

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Argentina (continued) (CCPR/C/75/Add.1)

1. At the invitation of the Chairman, Mr. Barra and Ms. Regazzoli (Argentina) took places at the Committee table.

Constitutional and legal framework within which the Covenant is implemented, state of emergency and rights of persons belonging to minorities (article 2, paragraphs 2 and 3, article 4 and article 27 of the Covenant) (section I of the list of issues) (continued)

2. Mr. BARRA (Argentina), replying to earlier questions, said that under article 116 of the Argentine Constitution, the Supreme Court and lower courts could declare a law or executive decree unconstitutional. A law found to be at variance with the Constitution was declared unconstitutional provided that the declaration of unconstitutionality was useful in order to resolve a specific legal question. As in the constitutional system in the United States of America, the decision taken applied to the specific case under consideration. That frequently led to the repeal of the law or decree declared unconstitutional. The Supreme Court, as the court of the last appeal in such matters, had the final say in declaring a law unconstitutional.

3. As a result of the 1994 constitutional reform, the age-limit for Supreme Court justices was 75 years, which could be extended for an additional five years with the approval of the Senate. Supreme Court justices were appointed by the President and could be removed by impeachment, which was conducted by the Congress. Lower court judges could be removed by means of special prosecution courts set up to deal with such matters.

4. In Argentina, there was no system for the prior review of the constitutionality of laws adopted. Draft legislation was not reviewed by any constitutional court. The Argentine Constitution did, however, provide for the interpretation of laws by judges. For example, divorce had been prohibited in Argentina under the Civil Code until 1987. The constitutionality of that law had been challenged by parties claiming that it violated certain individual rights and the law had been found to be unconstitutional by the Supreme Court. Immediately afterward, the Congress had adopted a law permitting divorce. Under his country's constitutional system of open limits, such decisions by the courts often led to rapid follow-up action by the legislative bodies.

5. Until the 1994 reform, the remedy of amparo had not been provided for under the Constitution. During the 1970s it had been established under national legislation as a speedy and effective way of protecting rights in cases of violations arising from arbitrary or illegal acts. As a result of the 1994 reform, the remedy of amparo had been established as a constitutional guarantee and broadened in scope. Under article 43 of the Constitution, any person could invoke the remedy of amparo, provided that no more suitable judicial remedies

were available, in the case of acts that infringed, restricted, altered or jeopardized the rights and guarantees laid down in the Constitution, a treaty or national legislation. In addition, a law which infringed a constitutional right could be declared unconstitutional by means of the remedy of amparo.

6. In accordance with the second paragraph of article 43, amparo could be invoked by individuals, ombudsmen or certain associations in more general situations involving discrimination against groups. Two persons legally entitled to bring an action were necessary in order to have recourse to amparo in such cases. The Constitution also provided for habeas data, which was designed to guarantee the accuracy of personal data kept on file in public and private data banks.

7. The Supreme Court had ruled that the international treaties to which Argentina was a party took precedence over national legislation. Article 31 of the Constitution merely enumerated the various sources of law without giving any hierarchical order. Article 75, paragraph 22, of the Constitution specified the treaties and agreements that took precedence over national legislation and had been incorporated into the Constitution itself. Accordingly, a state of siege, for example, could be declared only if due account was taken of the provisions of article 4 of the Covenant. The rights guaranteed under the Covenant could not be suspended. Since the Supreme Court had ruled that the State must comply with its obligations under international treaties, part III of the Covenant was fully operative in Argentina, and the courts could apply its provisions immediately.

8. The composition and procedures of the Council on the Judiciary were currently being considered by the Congress and a specific law in that regard would be adopted by August 1995. With regard to the relationship between the Supreme Court and the Court of Criminal Cassation, he pointed out that the Supreme Court tried cases on appeal involving questions of constitutionality, the application of procedural law, and alleged arbitrary decisions. The Court of Criminal Cassation interpreted criminal law and identified certain types of behaviour as offences. It had been in operation since 1992 and established penal doctrine and procedure. The Supreme Court could consider on appeal cases that arose in connection with the application of the Defence of Democracy Act if the issue of constitutionality or an alleged arbitrary decision was involved. The Supreme Court heard approximately 700 cases of arbitrary decisions annually.

9. In the area of judicial reform, Congress had approved a partial reform of the civil code three years earlier which combined civil and commercial law. However, that reform had been vetoed by the executive power, as a more thorough debate on the matter had been deemed necessary. Two bills had been introduced in the area of obligations, the first by the executive power and the second by the Chamber of Deputies, and both were currently under review by the Senate. In addition, Congress was considering a draft reform of the Code of Civil and Commercial Procedure that would provide for oral procedures to take the place of existing proceedings, which were generally written. It was anticipated that a new Code of Civil and Commercial Procedure would be in place by 1998.

10. In response to a question regarding a case currently before the Argentine courts in which Italy had demanded the extradition of a former SS officer living

in Argentina who had been involved in mass executions of civilians in Rome at the end of the Second World War, he said that the courts had initially ruled in favour of the defendant, whose attorney had introduced evidence that was not relevant to extradition proceedings. More recently, however, the courts had decided to modify the rules of evidence so that extradition proceedings could be handled more swiftly and, in the specific case under review, had ruled that international treaties took precedence in extradition cases and dictated the procedures judicial bodies should adopt.

11. Lastly, Argentine law stipulated that all bodies having jurisdictional authority to settle disputes between parties had to be presided over by judges who were to be appointed in accordance with standard procedures.

12. Ms. REGAZZOLI (Argentina) said that the first law passed by the new Congress following the establishment of democracy in 1983 had been a law declaring general amnesty. In 1988, a law banning all forms of torture had been introduced and a committee on torture had decided that the Government had a moral obligation to compensate anyone who had been arbitrarily or illegally detained between 1976 and 1983. With regard to the issue of granting pardons, under the revised Constitution which had entered into force on 24 August 1994, the President had the authority to decree a pardon. However, the pardon did not erase a crime but merely shortened the criminal's sentence. All individuals were eligible to request and receive a pardon.

13. As part of an ongoing policy to instil new awareness of human rights without disregarding the past two publications - a book which detailed the investigations that had been conducted in connection with the trials of the former military leaders and the "Sabado" report - were being used in all secondary schools and universities in Argentina to educate young people about the need to defend human rights. The Under-Secretariat for Human Rights, a part of the Ministry of the Interior, had been renamed in 1993 as the Under-Secretariat for Human and Social Rights, thereby expressing the widely accepted view that human rights were indivisible from other social, political, economic and cultural rights. In addition, a Federal Council on Human Rights had been established in each state of Argentina to coordinate the activities of the Under-Secretariat. At the regional level, the Inter-American Institute of Human Rights held training courses yearly to educate professionals, legislators and students on human rights issues. International bodies such as the International Committee of the Red Cross were cooperating with security forces in Argentina to promote the protection of human rights.

14. For 25 years, beginning in 1955, Argentina had experienced a period of strict authoritarianism during which its citizens had been deprived of all civil and political rights. The people of Argentina were attempting to overcome that past and create an atmosphere of respect for human rights. With regard to possible lists of disappeared persons, it was assumed that if the executive power had had any such lists in its possession, they would have been produced during the trials of the former military leaders. All matters relating to investigations of disappearances of persons were now handled by the courts.

15. Elaborating on the activities of the National Institute of Indigenous Affairs, she said that that Institute was helping indigenous people in Argentina

to receive proper, bilingual education and to become landowners, while also ensuring that such people maintained their cultural identity. In cooperation with the European Union, a programme had recently been launched to train indigenous people with a view to integrating them more fully into the market-place and to provide them with land and housing. A map of the distribution of indigenous groups throughout the country was available for consultation, as were copies of the pilot project.

16. In answer to a question regarding the access of non-governmental organizations to the report under consideration, she said that such organizations had been provided with copies of the report and that it had also been sent to other human rights bodies in both the Senate and the Chamber of Deputies.

17. Mr. KRETZMER inquired whether procedures existed to remove from power, and prevent the professional advancement of, persons convicted of human rights violations who had been pardoned.

18. Mr. MAVROMMATIS requested information on the manner in which Argentina implemented the views of the Committee with respect to the first Optional Protocol.

19. Mr. BARRA (Argentina), replying to questions raised regarding the power of the President to declare a state of siege, said that article 23 of the Constitution was compatible with article 4 of the Covenant. The suspension of constitutional guarantees during a state of siege was covered by article 4.

20. As to the concern expressed by Mr. El-Shafei at the preceding meeting regarding a discrepancy between the information on declarations of a state of siege provided in Argentina's report to the Committee on Torture and that contained in its report to the Human Rights Committee, the former report indicated that a state of siege had been declared on two occasions during the period 1983-1989. However, the latter report stated that none had been imposed since the restoration of democratic government in 1989.

21. Ms. REGAZZOLI (Argentina) said that where the appropriate authorities received reports of violations, hearings were held, and if a public official was found to have committed an unlawful act, the findings were reported to the individual's administrative authorities with a view to terminating the person's employment.

22. Mr. KRETZMER inquired whether that procedure applied also to members of the armed forces and the security services.

23. Mrs. MEDINA QUIROGA asked whether a formal complaint was required to initiate administrative proceedings in the case of civil servants who, owing to the amnesty, had not been brought to trial, and whether such persons went unpunished because of the "Punto Final" law.

24. Mr. BARRA (Argentina) confirmed that no persons convicted of human rights violations currently held any public office. Persons who had not been convicted were presumed innocent, and that protection could not be removed without a court

decision. Civil service and military personnel could be removed from service only for cause, such as failure to perform their duties or commission of an illegal act, for which the person must have been convicted.

25. Mrs. MEDINA QUIROGA recalled that at the conclusion of the Committee's consideration of Argentina's initial report, the representative of Argentina had stated that the amnesty had not eliminated the culpability of those who had committed human rights violations. She therefore wished to know what happened when there was no conviction or when proof contradicting the presumption of innocence existed.

26. Mr. BARRA (Argentina) said that, unfortunately, there was no way to prosecute further persons who had not been convicted. However, complainants were entitled to reparations.

27. Ms. REGAZZOLI (Argentina), said that promotion recommendations for military personnel were forwarded by the armed force in question to the Executive power, which in turn transmitted them to the Senate. After reviewing any complaints, reports or other documents, the Senate could decide whether to grant the promotion. In 1994, two naval officers had been denied promotion owing to the substantial human rights accusations brought against them.

28. Mr. BUERGENTHAL inquired whether disciplinary measures existed which the State could implement once new information came to light.

29. The CHAIRMAN, speaking in his personal capacity, asked whether the fact that the two naval officers in question had been neither promoted nor convicted violated the principle in article 14 of the Covenant concerning presumption of innocence.

30. Mr. BARRA (Argentina) said that promotion was discretionary and that the denial of promotion requests stemmed from an executive decision and was not proof of culpability.

31. Mr. BRUNI CELLI observed that since only certain promotion requests were referred to the Senate, the problem remained.

32. Mr. PRADO VALLEJO said that he would be interested in learning what happened in the case of former military personnel who might be guilty of human rights violations but who, by virtue of their current civilian status, were not covered by the amnesty, and what recourse was available to the relatives of victims.

33. The CHAIRMAN, speaking in his personal capacity, wondered why the two officers who had been denied promotions were still in the armed forces, given the number of complaints of human rights violations lodged against them.

34. Ms. REGAZZOLI (Argentina) said that all officers questioned in connection with human rights violations had already left the armed forces. In the case of the two officers whose promotions had been denied, the Senate had simply stated that they had not been promoted because of the complaints, but had not described

the complaints or revealed who had filed them. Complainants could seek redress before the civil courts.

35. In reply to Mr. Prado Vallejo, she pointed to a case that had recently received wide publicity in which a former member of the armed forces had disclosed information about the manner in which certain persons had been killed. The matter was before the courts; the courts had not considered such cases in 1983.

36. Mr. BARRA (Argentina) referred to two additional cases which illustrated the important point that there was no restriction on the power of judges to take appropriate action in cases of alleged human rights violations.

37. In reply to the question raised by Mr. Mavrommatis, he said that his country implemented the first Optional Protocol in the manner intended by the Covenant, subject to a law setting out Argentina's reservation with respect to the Malvinas Islands and a clarification to the effect that the implementation of article 15, paragraph 2, of the Covenant was subject to the principle established in article 18 of the Argentine Constitution which called, inter alia, for appropriate guarantees of due process. In order for any international treaty to apply in his country, its provisions must be reflected in the relevant national legislation.

Right to life, treatment of prisoners and other detainees, liberty and security of the person and right to a fair trial (articles 6, 7, 9, 10 and 14 of the Covenant) (section II of the list of issues)

38. The CHAIRMAN read out section II of the list of issues concerning the second periodic report of Argentina, namely: (a) whether the draft reform of the Code of Military Justice had been completed, in particular, whether articles 528 and 621 had been amended with a view to abolishing the death penalty and whether consideration had been given to the possibility of acceding to the second Optional Protocol and information on the current jurisdiction of military courts; (b) the findings of the National Commission on Disappearances of Persons (CONADE) and the Public Prosecutor's Office in their investigations of unresolved cases of disappearances that had occurred during the state of seige, the situation of children whose parents had disappeared during that period and the information obtained through the genetic data bank in that regard; (c) rules and regulations governing the use of weapons by the police and other forces, violations of those rules and regulations, if any, measures taken against persons found guilty of such acts and measures to prevent recurrences; (d) information regarding any complaints of torture, disappearances, extrajudicial executions, arbitrary detention or other inhuman or degrading treatment or punishment by the police or other forces, and information on investigations or prosecutions in such cases, action taken to punish those found guilty and the compensation of victims; (e) information on training programmes for law enforcement officials aimed at informing them of their obligations under the Covenant and of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; (f) information on compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners, the accessibility of the relevant regulations and directives to persons deprived of their liberty, and the accessibility of prisoners to the Government Procurator

for the Prison System; (g) information on conditions and duration of incommunicado detention; and (h) clarification of the functions and activities of the Advisory Commission on the Magistrature and description of the steps taken to strengthen the independence of the judiciary and protect judges from threats of intimidation.

39. Ms. REGAZZOLI (Argentina), referring to section II (a), said that when the rule of law had been restored on 10 December 1983, both the Criminal Code and the Code of Military Justice had envisaged the death penalty for certain crimes. By Act No. 23,077 of 9 August 1984, that penalty could no longer be applied under the Criminal Code and related laws. The Code of Military Justice continued to envisage capital punishment, but only for serious crimes such as those generally committed in time of war. The death penalty had not been imposed for over 30 years and, in the light of amendments to the Constitution and the Pact of San José, it never would be reinstated.

40. With regard to the jurisdiction of military courts, she said that although efforts had been made to harmonize recent changes concerning procedure in the Code of Military Justice with those made to the Code of Criminal Procedure, there were important differences. An examining magistrate presided over pre-trial proceedings, the trial itself was conducted by the Standing War Council and appeals were dealt with by the Supreme Court of the Armed Forces, with compulsory reference to the federal appeals court competent in the location where the events had taken place. By Act No. 23,049 of 1984, the national judiciary had the final say prior to any appeal to the country's Supreme Court of Justice. The judges presiding at preliminary proceedings were active members of the armed forces assigned on a case-by-case basis and were not necessarily lawyers. They were advised by military attorneys.

41. As a general rule, a defendant enjoyed the same guarantees under the Code of Military Justice as those available to an individual being tried in a similar situation under the Code of Criminal Procedure. Act No. 23,049 also abrogated provisions establishing military jurisdiction over civilians. Similarly, military courts had jurisdiction only in respect of crimes and offences of a military character.

42. With regard to section II (b), she said that Decree No. 1306/92 had established a National Commission on the Right to Identity within the Under-Secretariat for Human and Social Rights of the Ministry of the Interior. The purpose of the Commission was to facilitate the search for children who had disappeared and to determine the whereabouts of children of unknown identity who had been kidnapped or had disappeared, as well as of children born to mothers illegally deprived of their liberty and other children whose identity was unknown because they had been separated from their biological parents for various reasons. The Asociación Abuelas de Plaza de Mayo had provided valuable assistance. Extensive tests conducted by the genetic data bank, some of which had been re-evaluated overseas, had revealed that some children were not in fact who they had been thought to be. She offered a few examples of the thousands of cases which illustrated how difficult it was to ascertain the truth and how painful the findings could be. The difficulties involved in searching for lost children after so many years could not be underestimated. However, if a grandparent applied for such a search, the Government would pursue the matter.

43. Mr. BARRA (Argentina) said, in connection with section II (c), that article 184 of the Code of Criminal Procedure empowered the police and security forces to use force as needed. In addition, the Police Organization Act provided that members of the national police force could display their weapons and use them to maintain order, guarantee security and prevent the perpetration of crimes, and for other legitimate purposes. The use of force must, however, be appropriate to each case. Weapons could be used by the police to defend themselves and third parties when lives were at risk, but always as a last resort. The use of weapons under circumstances other than those provided by law was a criminal offence and was so prosecuted in ordinary or federal courts, and indeed some police officers had been convicted of homicide.

44. Ms. REGAZZOLI (Argentina) said, as regarded section II (d), that the National Technical and Pre-Trial Department of the Under-Secretariat for Human and Social Rights within the Ministry of the Interior had brought to trial a number of relevant complaints. Argentina had also provided to the Commission on Human Rights the information requested by the special rapporteurs dealing with torture and summary or arbitrary executions.

45. Concerning section II (e), she said that a series of symposia had been organized in April 1994 on the international human rights system for officers of the federal and provincial prison services by the Under-Secretariat of Human and Social Rights of the Ministry of the Interior and the Office of the Government Procurator for the Prison System. In October 1994, the Institute for the Promotion of Human Rights of the Ministry of the Interior, in cooperation with the United Nations Centre for Human Rights, had held a training seminar in which some 50 assistant police commissioners had participated. Advanced training courses had been developed for each different rank of the police hierarchy, covering subjects such as public international law, the provisions of the major human rights instruments, and civil rights. A specific course on human rights had been given in October 1994 at the Higher Federal Academy to train trainers in the police force.

46. Regarding section II (f), the provisions of Decree-Law No. 412/58, comprising the national prison legislation, reflected those of the United Nations Standard Minimum Rules for the Treatment of Prisoners. As part of the prison reform, new prison legislation was being drafted to improve situations that needed remedying.

47. As part of his functions and prerogatives, outlined in paragraph 53 of the report, the Government Procurator for the Prison System could make recommendations for adoption by the Ministry of Justice, which was responsible for the control and supervision of the national and federal prison system. According to his first report of August 1994, which was being made available to the Committee, the Procurator had reviewed 1,382 complaints or requests from inmates, dealing mainly with unduly prolonged pre-trial detention and problems involving disciplinary sanctions, health care, physical mistreatment, sanitation, nutrition, prison work, and arrangements for visits correspondence and telephone privileges. The Procurator had made 373 recommendations, 100 of which had been acted upon and 83 denied. Not much progress had yet been made in addressing systemic problems, but the forthcoming Prison Reform Guidelines would no doubt be a step forward.

48. Act No. 24,390/94 stipulated a maximum time-limit of two years for pre-trial detention, but in unusually serious or complex cases it allowed that period to be extended by a further year and even, in particular circumstances, six additional months as well.

49. Mr. BARRA (Argentina) added that while Act No. 24,390 sought to solve the serious problem of pre-trial detention which lasted longer than two years, the average length of a case was a more reasonable eight months.

50. Ms. REGAZZOLI (Argentina) said, with regard to section II (g) and incommunicado detention, that article 205 of the Code of Criminal Procedure provided for such detention of accused persons for a maximum of 48 hours, with a possibility of extension for a further 24 hours upon written application if there was reason to believe that the accused might conspire with third parties or obstruct the investigation in some way. Suspects arrested by the police could be held incommunicado for a maximum of six hours, after undergoing a psychological and physical examination, and could continue to be held incommunicado for a maximum of 72 hours only on the order of a judge. Throughout the incommunicado detention, the accused could communicate freely with his attorney and had access to books and other suitable objects he might request. He was also authorized to perform essential civil acts, provided that they did not prejudice the proceedings.

51. She wished to point out that section II (h) of the list of issues had been addressed at the previous meeting.

Non-discrimination and equality of the sexes, right to privacy, freedom of conscience, religion, expression and association, and protection of the family and children (article 2, paragraph 1, articles 17-19 and articles 21-24) (section III of the list of issues)

52. The CHAIRMAN read out section III of the list of issues, namely: (a) circumstances under which telephone and telegraph tapping was authorized and the safeguards to which it was subject; (b) action taken by the authorities in response to the Committee's concluding comments on the initial report with regard to the special status and privileges granted to the Roman Catholic Church; (c) the provisions of the military service bill on conscientious objection (para. 66 of the report); (d) information on legal restrictions under Act No. 24,198 (para. 67 of the report) on the exercise of the freedom of expression and, in particular, freedom of the press and the mass media; (e) the extent to which attacks on journalists had limited the enjoyment of freedom of expression and the right to receive and impart information, and any steps taken to protect journalists from such attacks; (f) any measurable progress in eliminating the remaining inequalities between men and women (paras. 26-28 of the report) as a result of the establishment of the National Council on Women and the Cabinet of Presidential Advisers set up to monitor the implementation of the three-year Equal Opportunity Plan; (g) the compatibility of decrees suspending collective agreements in the maritime industries with the freedom of association under article 22; (h) information on the law and practice relating to the employment and protection of minors.

53. Ms. REGAZZOLI (Argentina) said, with regard to section III (a), that article 236 of the Code of Criminal Procedure authorized tapping, when justifiable, by order of a judge. Articles 234 and 235 also laid down specific provisions for the interception of correspondence.

54. Mr. BARRA (Argentina), referring to section III (b), pointed out that articles 14 and 20 of the Constitution upheld the right of all residents, including foreigners, to worship their own religion freely, even though Roman Catholicism was officially supported as the majority religion. By granting all residents the same freedom of worship, such a system respected their civil and natural equality. Church/State relations in Argentina were governed by the principles of autonomy and cooperation established in the Agreement of 10 October 1966 between the Holy See and the Argentine Republic, adopted in Act No. 17,032. It should be noted that the recent constitutional reform had abolished the former requirement under article 76 that the President must be a Catholic.

55. Ms. REGAZZOLI (Argentina) said, concerning section III (c), that Decree No. 1537/94 established the professional armed services personnel regime which made volunteer enlistment in the three armed forces the rule. Since compulsory military service had thus been abolished, conscientious objection was no longer an issue. She noted that 60 per cent of the volunteers who had enlisted since the passage of that legislation had been women.

56. With regard to section III (d), neither the Congress nor the executive branch had adopted any legislation or order restricting freedom of expression, although there were certain bills under consideration that sought to regulate ex post facto responsibilities in that area.

57. With regard to section III (e), the deputy chief of the Office of the Attorney General had been appointed as a special prosecutor to investigate attacks on journalists immediately after the first such occurrence. Since he had begun his investigations on 10 September 1993, he had brought to light many details of such attacks, and the identification of one of the perpetrators responsible for 30 of the crimes, together with preventive measures, had eventually led to the cessation of such occurrences.

58. The National Council on Women and the Cabinet of Presidential Advisers referred to in section III (f) of the list of issues were very innovative. Their aim was to promote equal opportunity for women in education and other fields, and to coordinate the efforts of all ministries to implement the Equal Opportunity Plan of Action. The Plan had already been put into practice in the field of education, and the curriculum and textbooks were being revised.

59. The Council was working with the Cabinet and with the Under-Secretariat for the Human Rights of Women to ensure the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. Argentina, it should be noted, was the only country to have incorporated that Convention into its Constitution. The Council also oversaw the application of the Quota Act (para. 26 of the report) and administered a series of programmes to establish equality of opportunity for women in employment, public administration and decision-making posts. There had been a successful programme to eradicate

violence against women, and Argentina would soon be ratifying the convention recently adopted by the Organization of American States on violence against women. The Council was also enforcing the application of a decree providing for the discharge of any public official who practised gender-based discrimination. There was no legal discrimination between men and women in the field of labour but rather de facto discrimination by individual employers.

60. Mr. BARRA (Argentina) observed that the Constitution contained positive provisions on behalf of women guaranteeing their equality of opportunity and treatment, and that de facto discrimination against women, children, the elderly or the disabled was regularly being combated by congressional legislation, most recently in the setting of electoral quotas for women.

61. Ms. REGAZZOLI (Argentina) noted that 80 of the 305 convention delegates to the recent constitutional convention held to reform the Constitution had been women.

62. As to section III (g), Decree No. 817/92 had abrogated the labour clauses of a series of agreements as an omnibus measure adopted at the time of the dissolution of the General Ports Administration and the creation of the Under-Secretariat of Ports and Navigable Waterways within the Transport Secretariat of the Ministry of the Economy, Public Works and Services.

63. As to the empowerment and protection of minors, article 128 of the Civil Code established 21 years as the age of majority, but minors could be employed at age 18 without special legal consent or authorization, in accordance with the labour regulations. Minors qualified to practise a profession could do so without prior authorization and could freely dispose of the products of their labour; they could also take part in civil or criminal proceedings having to do with related actions.

64. The Ministry of Labour and Social Security was responsible for implementing labour legislation. Article 188 of the Labour Contract Act provided that employers must obtain medical certificates in advance for minors of either sex under the age of 18 and have them undergo periodic medical examinations. Decree-law No. 14,538/44 stipulated that minors under the age of 18 must be examined as to their physical ability to perform the tasks to which they were assigned. Such aptitude tests must also evaluate the sanitary and safety conditions in the workplace. Article 189 of the Labour Contract Act prohibited employers from hiring minors under 14 years of age for any type of work, paid or unpaid, the exception to that rule being minors employed in small family businesses, with ministerial authorization. Article 190 of the Labour Contract Act provided that minors between the ages of 14 and 18 could not work more than 6 hours a day or 36 hours a week, although minors over 16 years of age could, with administrative authorization, work up to 8 hours a day or 48 hours a week. Minors of either sex were not allowed to do night work, between the hours of 8 p.m. and 6 a.m, with the specific exceptions stipulated in article 173 of the Labour Contract Act for male minors over 16 years of age.

The meeting rose at 6.05 p.m.

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HUMAN RIGHTS COMMITTEE

Fifty-third session

SUMMARY RECORD OF THE 1391st MEETING

Held at Headquarters, New York,
on Wednesday, 22 March 1995, at 10 a.m.

Chairman: Mr. AGUILAR

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95-80469 (E)

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Argentina (continued) (CCPR/C/75/Add.1)

Right to life, treatment of prisoners and other detainees, liberty and security of the person and right to a fair trial (articles 6, 7, 9, 10 and 14) (section II of the list of issues) (continued)

Non-discrimination and equality of the sexes, right to privacy, freedom of conscience, religion, expression and association, and protection of the family and children (article 2, paragraph 1 and articles 3, 17, 18, 19, 21, 23, 24 and 26) (section III of the list of issues) (continued)

1. At the invitation of the Chairman, Mr. Barra and Ms. Regazzoli (Argentina) took places at the conference table.

2. Mrs. MEDINA QUIROGA, referring to section II of the list of issues, said she had been struck by the problem of minors in general and the children of disappeared persons in particular. More information was needed on their plight. Furthermore, the reporting State should provide additional data on any programmes designed to help such minors emotionally.

3. Regarding reform of the Code of Criminal Procedure, she expressed concern that the new Argentine Constitution and the criminal code seemed to be at cross purposes. Specifically, the code talked about the circumstances in which release from prison could be granted, but said nothing about when, how and for what purpose an individual should be held in pre-trial detention or custody. The reporting State should therefore clarify the purpose of pre-trial detention. She was particularly concerned that an individual might be held in pre-trial detention for a period equivalent to the maximum term of imprisonment applicable to the crime of which he had been accused. In addition, the article in the Code of Criminal Procedure dealing with bail gave the impression that the amount of bail set might be related to the economic nature of the crime involved, and thus bail could be regarded as an anticipation of penalty. She would appreciate assurances from the reporting State that pre-trial detention was not simply being abused as an instrument of punishment prior to the initiation of trial proceedings.

4. On the matter of Argentine drug legislation, she sought further information about points of divergence between the relevant legislation and the provisions of the Code of Criminal Procedure.

5. With regard to section III of the list of issues and article 2 of the Argentine Constitution, she inquired whether the Roman Catholic Church was an integral part of any State institutions, and if so, what implications such involvement had for the equality provisions made explicit in article 18 of the Covenant. Lastly, she noted that although it was no longer a requirement that the President, Senators and Supreme Court judges should be Roman Catholics, she

was still puzzled by the minimum income requirement mentioned in articles 55, 89 and 111 of the Constitution and wondered why that discriminatory provision had not been removed.

6. Mr. BÁN, referring to cases of torture that had occurred since the end of the military regime in Argentina, inquired why the Argentine Government had remained silent about those cases in its report, why the police and security forces had seen fit to resort to torture, and what steps were being taken to fully eradicate the practice. He also noted that cases of enforced disappearance continued to occur; more information was needed about those cases, and particularly about the role played by the police in such crimes.

7. Regarding the Committee's questions submitted in sections II and III of the list of issues, he was disappointed that the reporting State had not provided full enough answers to section II (h) and section III (a) and (e). Additional details were required on measures designed to curb intimidation of judges and journalists and impose tighter controls on clandestine police methods.

8. Mr. KLEIN asked whether, in the light of article 10, paragraph 1, of the Covenant, the Argentine Government was contemplating any legal measures to review life sentences with a view to releasing prisoners after a set period of time had elapsed. He pointed out that human dignity was violated in cases where prisoners stood absolutely no chance of being released.

9. Mrs. EVATT said that the atmosphere of impunity in Argentina with regard to past human rights abuses still appeared to affect the attitudes and behaviour of the police and the military, as evidenced by the continuing extrajudicial killings. It would be useful to know whether the reporting State was contemplating a general inquiry into the police with a view to restructuring and reorganizing the entire institution.

10. On the subject of prisons, it was unclear whether there were any special facilities for juvenile detainees. She was also concerned that two thirds of the female prison population was on remand, and wondered whether that proportion had changed as a result of new laws governing that matter. The same consideration applied to the 3,000 prisoners being held in police custody owing to lack of prison space.

11. Noting that the Code of Criminal Procedure gave judges the right to issue warrants authorizing the interception of telephone calls, she asked the reporting State to clarify the criteria that were used to draw up such warrants.

12. Mr. ANDO, commenting on the issue of pre-trial detention, inquired how the Argentine Government's treatment of that matter complied with the principle of the presumption of innocence. He requested more details about intimidation of judges and journalists, and further information on police investigations into students' political affiliations. Lastly, he noted that there still seemed to be inequality between the sexes on the issue of the management of marital property. The reporting State should explain the position more fully, and should be more specific on the comparative rights of children born in and out of wedlock and the transmission of citizenship through marriage.

13. Mrs. HIGGINS said that the Committee would welcome clarification on precisely what correspondence could be confiscated by police and security officers pursuant to article 185 of the Code of Criminal Procedure. The question of whether Argentine law enshrined a general prohibition of wire-tapping also needed clarification. It would also be interesting to know precisely in what circumstances a judge could order a phone to be tapped, and what redress was available to persons who disputed that the authorities had satisfied the legal requirements for telephone tapping or interception of mail.

14. Mr. FRANCIS said that he understood the inevitability of general amnesty in response to the recent events in Argentina's history, but, given the intensity of the human rights violations committed and the consequences for their victims, he wondered what consideration had been given to the issue of compensation.

15. It would be important to learn whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were being undermined by the overcrowding in Argentine prisons, particularly the provisions regarding separate facilities for juvenile offenders.

16. Mr. KRETZMER said that very disturbing reports of police violence had been received from many sources. More information was needed on the procedures for investigating such occurrences, the institutional arrangements for individuals submitting complaints, particularly to protect them from further harassment, and the arrangements for independent investigation.

17. The relationship between the federal Government and the provincial governments was not clear, in particular, the extent of the federal Government's power to impose the application of the Covenant on provincial governments.

18. The CHAIRMAN, speaking in his personal capacity, said that more information was needed on the Government's policy regarding immigrants. He wondered if the programme for settling Eastern European immigrants would be extended to other groups.

19. Ms. REGAZZOLI (Argentina) said that she was transmitting to the Committee in written form the most recent information on the transfer of land to indigenous groups.

20. Mr. BARRA (Argentina) said, in reply to many questions regarding pre-trial detention, that it was only one part of the process of bringing a case to trial and that it did not alter the presumption of innocence of the accused. It was simply a precautionary measure used when there was a risk that a defendant might not appear in court as ordered. It was the exception rather than the rule; the normal practice was to set bail. Pre-trial detention was limited to a two-year maximum, which could be extended by one year. In the event of a conviction, any sentence imposed would be reduced by two years for each year of pre-trial detention served beyond the two-year limit. In a sense, pre-trial detention did constitute serving a sentence in advance, but because of the individual circumstances of certain cases, it was sometimes appropriate. No special legal regime was applied to drug-trafficking offences, although some special methods could be used in their investigation. A longer term of pre-trial detention was

applied for narcotics-trafficking offences because of their gravity and the difficulty and danger in their investigation.

21. The prison system was a subject of special concern to the Argentine Government. Accordingly, the President of the Republic would sign in the very near future the first overall plan for prison policy covering the period 1995-1999. Part of that plan included the amendment of the prison code. The main goal of a prison sentence was the social rehabilitation of the offender; thus, some prison structures were being changed to reflect that goal. Efforts were being made to increase professionalism among the prison personnel and to encourage greater specialization. Of course, no new policies could be implemented without adequate facilities, and efforts were under way to improve conditions in Argentine prisons. Construction of a new prison to house about 300 prisoners had begun, and two more, designed to house a total of 3,300 prisoners, were scheduled for completion in April 1996. The new prisons were entirely modular and consisted mainly of single cells, with open space for recreation, a hospital, workshops, educational and sports facilities and facilities for religious observance. Two additional prisons were scheduled for construction by mid-1997. In a third phase, the existing federal prisons in provincial cities would be replaced and relocated to the area around Buenos Aires, in order to facilitate visits to prisoners by family members and legal advisers. No prisoners were serving their sentences in police or military installations because of overcrowding.

22. The sentence of life imprisonment was imposed only in exceptional cases: he was aware of only one life sentence currently being served. The possibility of parole after 25 years; the president could also commute the sentence.

23. The Constitution guaranteed privacy, which extended to all types of communications, including electronic mail. On an exceptional basis, judges could order telephone taps or the interception of other forms of correspondence. Such orders would be executed by the judicial police. Similar legal procedures existed to regulate such measures in almost every legal system.

24. The 1977 reform of the Civil Code had eliminated all distinction between legitimate or "illegitimate" children; the rights of children born either within or out of wedlock were absolutely equal. Both spouses had equal rights regarding marital property and both must approve the sale of joint property. Each spouse retained control over individual property acquired before marriage. In practice, however, the evolution of the roles of men and women was a cultural process. The Government had made a commitment to promote women's rights, and, while the situation was not perfect, many positive changes had occurred.

25. Regarding the implementation of the Covenant by provincial governments, the federal Government did have the power to intervene in extreme cases where a provincial government did not apply the Covenant. The Supreme Court of Justice provided the guarantees for the application of international human rights treaties, and could rule on the constitutionality of a provincial law if it was at variance with federal law.

26. Ms. REGAZZOLI (Argentina) recalled that several members of the Committee had expressed concern regarding the situation of children whose parents had disappeared during the state of siege. She said that in 1983, after the restoration of democracy, it had become clear that such children and their families had been left with a difficult legacy of psychological and medical problems. The Government had endeavoured to provide all the necessary forms of support; one example of that was the issuance of travel documents at short notice, to enable such children to visit relatives in other countries.

27. Regarding the overall situation of young people, Argentina was not exempt from the problems that other countries were facing. Particular measures were being taken to protect street children from exploitation, and to help young people who were drug-users or otherwise at risk. Citizens wishing to help street children could give them food coupons rather than money, which would be taken from them by the adults who were exploiting them. Helping such children was not a simple problem that could be solved overnight. There was a need to increase public awareness of the problem. The real solution lay in a return to the traditional role of the family.

28. The increase in juvenile delinquency was to a great extent due to drug use; Mr. Barra had already mentioned some of the facilities which had been created for the rehabilitation, reintegration and training of young people.

29. Mr. BARRA (Argentina) said that young people under the age of 18 in Argentina could not face criminal charges; those between the ages of 16 and 18 could in certain circumstances be placed in special institutions. In prisons, those aged between 18 and 21 were housed separately from adults.

30. Ms. REGAZZOLI (Argentina), replying to a question asked by Mr. Bán, said that when the report was being prepared, her Government had not been aware of the complaints of torture to which he referred.

31. Mr. BARRA (Argentina), referring to a question by Mrs. Medina Quiroga regarding the connection between article 18 of the Covenant and article 2 of the Constitution, said that there was no real contradiction between the two. Support for the Roman Catholic faith was indeed mentioned in the Constitution, but that was for historical reasons, and its continuance was due to the fact that about 90 per cent of the population was Catholic. Religious freedom, which had already been guaranteed by the 1853 Constitution, had been further strengthened by the inclusion of the human rights treaties in the present Constitution. Religious discrimination was not practised, and there was no religious instruction in State schools. It was true that military chaplains were paid by the Government and that the Roman Catholic faith had a privileged status in Argentina; there was, however, a total separation of Church and State. As for the minimum income requirement for election to the Senate, although the Constitution (article 55) called for an income equivalent to 2,000 "pesos fuertes", that currency no longer existed and the rule was no longer applied in practice.

32. Ms. REGAZZOLI (Argentina), referring to a question regarding attacks on journalists and the protection of freedom of the press, said that according to certain journalists, the media currently had more freedom than ever before. A number of individuals who had been responsible for many attacks on journalists had been identified and they had no connection whatsoever with any government body.

33. Referring to questions that had been asked about the Government's policy on immigration, she said that that policy was very open; national identity papers had been issued to considerable numbers of citizens of neighbouring countries, and immigrants who had been resident in Argentina for more than 10 years would be allowed to vote in the next elections.

34. Mr. PRADO VALLEJO welcomed the positive nature of the dialogue which had taken place between the Committee and the representatives of Argentina, and thanked them for their specific and objective answers. The Government had made real progress in strengthening the enjoyment of human rights, especially by giving the international human rights instruments the force of constitutional law. However, certain laws which had originated during a regrettable period of the country's recent history, such as the "Punto Final" and "Due Obedience" laws, as well as the laws on amnesty and pardon, had led to incompatibilities with the guarantees enshrined in the Covenant. Attention should be given to that point, because in some cases the continued existence of such laws had obstructed the legal rights of the victims of abuses.

35. Mr. BUERGENTHAL said that Argentina had made impressive progress in overcoming the legacy of its tragic past. The recent changes to the Constitution, and other wide-ranging legal reforms, were of major significance and clearly showed the importance given to human rights by the people and the Government of Argentina. What was less clear from the report submitted to the Committee, and the accompanying oral presentations, was how those reforms were being implemented. The appropriate information should be provided to the Committee in the next report.

36. Reforms on the scale of those being attempted could not be carried out overnight. However, the Government should be aware that the Committee could fully appreciate the problems encountered only if it was provided with appropriate information as to the obstacles and difficulties that had arisen and the efforts made to overcome them.

37. He would welcome additional information regarding the work of the enforcement judge and his interaction with the Government Procurator for the Prison System. He also wondered why, in elevating certain human rights instruments to constitutional status, the Government had not included the Geneva Conventions and their Protocols, which could be relevant in the context of any future state of siege.

38. The Government should bear in mind its international obligation to investigate fully the new allegations of killings committed by its armed forces. At the very least, those responsible should not be allowed to remain in the armed forces. Investigations should proceed regardless of the identity or motives of the complaining party.

39. Mrs. EVATT said that the report, and the additional information provided by the representatives of Argentina, showed many positive and encouraging developments in that country. The new Code of Criminal Procedure, with its provisions for oral proceedings and rules on pre-trial detention, and the establishment of the Government Procurator for the Prison System, were very important.

40. Many concerns still remained, however, particularly regarding the amnesty laws. The authoritarian legacy of the past still seemed to be affecting the attitudes and behaviour of the armed forces, police, and security forces. Determined efforts were needed to overcome those attitudes and to deal with the incidents arising out of them.

41. She expressed concern regarding the length of pre-trial detention in the case of persons ultimately found not guilty; it was important that the length of such detention should be kept to a minimum, in accordance with article 9 of the Covenant. Above all, any outstanding claims for compensation should be brought to a successful conclusion as soon as possible.

42. She looked forward to finding details in the next report from Argentina as to how the new Constitution, as well as the Covenant itself, were analysed and interpreted by the courts.

43. Mr. EL-SHAFEI thanked the representatives of Argentina for their cooperation, and for the spirit of openness and frankness they had shown. He expressed concern regarding the incompatibility of certain existing laws with the effective implementation of the Covenant in that country. Such negative factors should not be permitted to affect the right to compensation of the victims of human rights violations. The Government should make further efforts to resolve the cases of disappeared persons, and to prevent attacks on journalists and the excessive use of force by the police.

44. Mr. KLEIN noted the improvement in the human rights situation in Argentina and welcomed, in particular, the status accorded by the new Constitution to international human rights instruments, including the Universal Declaration of Human Rights. He was not satisfied, however, with the delegation's responses concerning discrepancies between constitutional norms and international instruments which, for obvious reasons, could not be changed to harmonize with national legislation. The good will shown by high-level government officials did not always filter down to the lower levels of authority, particularly where there was direct contact with private citizens. In that connection, reports by non-governmental organizations (NGOs) were rather disturbing and indicated that much remained to be done in order to transform the mentality of the authorities at every level.

45. He welcomed, in particular, initiatives taken by the Argentine Government to include human rights education as a compulsory subject in the schools. Lastly, the presumption of innocence, a vital principle in criminal prosecution, should not be used as a pretext to avoid restructuring the public administration.

46. Mrs. MEDINA QUIROGA welcomed the progress achieved in the field of human rights in Argentina, in particular the status accorded to international human rights instruments. She noted that cultural change generally lagged behind legislative reform and referred, in particular, to the Latin American tradition of authoritarianism, which was still reflected to some extent even in the amended legislation of Argentina and other Latin American countries. Under Argentina's new code of criminal procedure, for example, pre-trial detention was decided according to the category of offence, a premise which seriously affected the principle of the presumption of innocence. The characterization of crimes in the Code of Criminal Procedure should be revised, as many of the offences allegedly committed by detainees were fairly insignificant. That would ease the problem of overcrowded prisons, which merely bred crime and placed a burden on countries with economic difficulties.

47. Mr. ANDO expressed appreciation for the oral presentation and the responses given by the Argentine delegation, which greatly compensated for shortcomings in the second periodic report itself. The link between the length of pre-trial detention and the anticipated sentence was still not clear and, in any case, was not consistent with the principle of the presumption of innocence. He wondered whether nationality was conferred on foreigners married to Argentine males and foreigners married to Argentine females on an equal basis. Perhaps the next periodic report could include information on that subject. He welcomed the 1994 constitutional reform process, particularly the importance attached to international human rights instruments, including the Covenant and the Optional Protocol. Like Mrs. Medina Quiroga, however, he had some reservations about the effect of the authoritarian culture on the implementation of the new legal provisions. The fact that both Argentina and Brazil had ratified the Covenant meant that it now covered the majority of Latin Americans.

48. Mr. LALLAH welcomed the constitutional reforms introduced but he expressed concern that the victims of past human rights violations had not been fully compensated. Monetary compensation was not sufficient; as Mr. Buergenthal had suggested, those responsible for the violations must be removed from positions of authority. In that connection, the practice of reassigning military personnel to other areas of the executive branch should be followed systematically. While the delegation had denied government involvement in violations committed against members of the media and the judiciary, the attacks on journalists and trade unions were none the less disturbing. Under article 2, paragraph 2, of the Covenant, the Argentine Government was obligated to take administrative and executive measures to ensure that such violations did not occur. Otherwise, the democratic system would be undermined by a culture of impunity.

49. Mr. BRUNI CELLI said that the responses provided by the delegation went a long way towards making up for the shortcomings in its second periodic report. Despite the reforms introduced, the shadow of past human rights violations still hung over Argentina. The Government must make every effort to prosecute the perpetrators and to provide both material and moral compensation to the victims. He hoped that an expeditious and impartial investigation of the most recent complaints filed would be conducted.

50. Mr. BÁN commended Argentina on its new Constitution, its Code of Criminal Procedure and the establishment of the post of Government Procurator for the Prison System. He agreed with other members of the Committee that much remained to be done in implementing the new legislation. Particularly disturbing were the amnesty laws, which might encourage further human rights violations in future. He was equally concerned by the fact that the criminal justice system was slow to prosecute those responsible for human rights violations. The Argentine Government should take drastic measures to identify and punish the perpetrators of more recent human rights violations.

51. Mr. FRANCIS welcomed the constitutional reform process which had taken place in Argentina and the judiciary's progressive interpretation of the relationship between national legislation and international human rights instruments. He also commended affirmative action taken in order to increase the representation of women in the National Congress; judicial reforms, particularly with regard to the resolution of conflicts through mediation; the establishment of the Ministry of Natural Resources and the Human Environment; and the introduction of programmes to rehabilitate prisoners and train prison staff.

52. Mr. KRETZMER welcomed Argentina's anxiousness to comply with the Covenant but pointed to a number of problems inherent in the difficult transition from an authoritarian regime to a democratic system. Like other Committee members, he was concerned that human rights violations committed under the previous regime had gone unpunished; he shared Mr. Bán's fears that that could have future repercussions. He called for a total delegitimization of the acts carried out under the previous regime, particularly in view of the claim that such methods were justified at the time. When those responsible for such acts remained in positions of authority, delegitimization was at best partial. He also shared Mr. Bán's concern about the gap between legal norms and actual practice, particularly with regard to the protection of individuals against human rights violations or arbitrary action by persons in positions of authority or acting under colour of authority. He welcomed the introduction of an independent mechanism to investigate the alleged mistreatment of prisoners and hoped that similar mechanisms would be introduced to deal with other violations, in particular police violence.

53. Mr. POCAR, commending Argentina on its constitutional reforms and its incorporation of international human rights treaties into its Constitution, endorsed Mrs. Medina Quiroga's proposal that the criminal justice system should be reviewed in the light of the constitutional reforms. In that connection, the judiciary and the Supreme Court would have a vital role to play. Awareness of the activities of the Human Rights Committee and, in particular, of its general comments could be extremely valuable to the judiciary in its efforts to implement the Covenant. He attributed current human rights violations, including attacks on trade unions and the media, to Argentina's legacy of human rights violations. He expressed concern about the effect of impunity and hoped that investigations of such violations would continue. Those responsible should be removed from positions of authority not only as a form of reparation but also in order to prevent future violations. Monetary and, more important, moral compensation must be provided to the victims.

54. The CHAIRMAN said that the second periodic report of Argentina had been insufficient, particularly as it had failed to address many questions raised during consideration of the first periodic report. However, he praised the thorough and honest presentation given by the delegation. Recognizing that the transition from dictatorship to democracy was difficult, he urged that human rights violations committed during the dictatorship should continue to be investigated; the Argentine people had a right to know what had occurred between 1976 and 1983. He expressed concern about the possible repercussions of impunity, and outrage that, several weeks earlier, it had come to light - two decades later - that some disappeared persons had been thrown into the sea. He found it even more incredible that the person who had revealed that information had been branded a traitor and that members of the military continued to attempt to conceal such violations.

The meeting rose at 1.10 p.m.

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Fifty-third session

SUMMARY RECORD OF THE 1392nd MEETING

Held at Headquarters, New York,
on Wednesday, 22 March 1995, at 3 p.m.

Chairman: Mr. AGUILAR

later: Mr. BÁN
(Vice-Chairman)

later: Mr. AGUILAR
(Chairman)

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95-80474 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Paraguay (CCPR/C/84/Add.3, HRI/CORE/1/Add.24)

1. At the invitation of the Chairman, Mr. Salum Flecha (Paraguay) took a place at the Committee table.

2. Mr. SALUM FLECHA (Paraguay), introducing his country's initial report, said that since the restoration of democracy in 1989, Paraguay had ratified a series of United Nations and Inter-American human rights instruments, including the Optional Protocol to the International Covenant on Civil and Political Rights. It had recognized the binding jurisdiction of the Inter-American Court of Human Rights and had adopted a modern, flexible Constitution guaranteeing the full range of rights. The international instruments had been incorporated into national legislation, just below the Constitution in order of precedence.

3. Human rights bodies had been established within each of the three branches of government: in the judiciary, an Office of the Prosecutor for Human Rights had been set up within the Attorney-General's Office in order to do away with the formerly interminable trials; both legislative chambers had a Human Rights Commission, each with its Legal Advice Office; and in the executive branch, the Directorate-General for Human Rights had been set up in 1990 to work with other government bodies, the United Nations Centre for Human Rights and the United Nations Development Programme to promote and publicize human rights and to provide official training in human rights. The Government also hoped to create a new human rights culture among the young through education.

4. A bill was currently before Parliament seeking indemnification for those who had been wrongly convicted under the dictatorship, in accordance with the Pact of San José.

5. The 1992 Constitution recognized various guarantees: habeas corpus could now be invoked before any judge of the first instance, even during states of emergency. Public seminars were being held on the new Constitution so that the people could learn of and exercise their rights.

6. His Government looked forward to hearing the Committee's recommendations regarding its report.

7. Mr. BRUNI CELLI said that, as the new Government had moved to institute sweeping political and legislative changes, Paraguay had become an example of how the advent of democracy fostered the protection of human rights. More information would be welcome on the way in which the new Government had conducted its investigations of the violations committed during 34 years of dictatorship and how it determined accountability.

8. Mr. BÁN commended Paraguay for its very detailed, systematic report and its outspokenness regarding shortcomings. There had been extraordinary improvements in a short period of time and a determined effort to redress past wrongs. He noted that Paraguay had made no reservations to the Covenant, but he wondered whether the country's legal system had been scrutinized in the light of the Covenant prior to ratification, and what legislative mechanisms would be used to reconcile any incompatibility between the Constitution and the Covenant since it had become part of national legislation. It would also be interesting to have more information on the role of the Ombudsman in protecting human rights and on the actual working relationship between the Legal Advice Office and the Human Rights Commission of the Chamber of Deputies (CCPR/C/84/Add.3, para. 15).

9. The report was ambiguous as to the death penalty: paragraphs 133 and 138 declared that the Constitution had abolished it, but paragraph 135 gave the impression that it could still be applied. In that connection, it would be interesting to know if Paraguay had any intention of ratifying the second Optional Protocol to the Covenant. Also with regard to the right to life, the age-limit set in article 334 of the Penal Code (para. 106) should be explained.

10. Under article 7, no reference was made to any problems in the treatment of detainees, yet Paraguay's report to the Committee against Torture had referred to allegations of ill-treatment in police stations even after the restoration of democracy, a fact corroborated by Amnesty International. He wondered whether any steps had been taken to eliminate such violations.

11. Articles 46 and 47 of the Constitution extended due process to "all inhabitants" (para. 291), but that seemed more restrictive than article 14 of the Covenant, which spoke of "every human being". Also, he wondered whether a judicial system based mainly on written proceedings was consistent with the requirement of fairness and publicity of proceedings set out in article 14.

12. More information would be useful on the actual legal situation of minors under the age of 14 who committed criminal offences (paras. 220 ff.). Regarding the irremovability of judges (para. 294), it was not clear how the five-year appointment provision was in keeping with stability of tenure. He would also like to know more about the actual time-limits for civil judicial decisions (para. 308) and whether they applied also to criminal procedure.

13. On the question of freedom of religion, it was not clear whether the constitutional provision explicitly recognizing the leading role played by the Catholic Church (para. 427) was a declarative or a normative text, how the status of the Catholic Church differed from that of other religions under the Civil Code (para. 429) and whether any distinction was made between the various religions in assigning penalties for disturbing ceremonies (para. 432).

14. The requirement that candidates for the Legislature must be of Paraguayan nationality by birth (para. 543) seemed to be a restriction of the rights under article 25 of the Covenant. It was also his impression that members of the armed forces did not enjoy the right to vote, again a restriction. Given the

unusually high number of irregular ballots cast in the 1993 elections (para. 548), it would be good to have more information on how elections were supervised.

15. Mr. Bán, Vice-Chairman, took the Chair.

16. Mrs. EVATT observed that the forward-looking provisions of Paraguay's Constitution nevertheless still required some legal enactment. For example, the indemnity provisions in article 17, paragraph 11, and article 39 of the Constitution apparently had yet to be regulated (para. 375 of the report), as did the very impressive press rights under articles 26 to 31 of the Constitution (para. 451 of the report). On the other hand, the core document (HRI/CORE/1/Add.24, para. 170) indicated that there was no impediment to enforcement of any international human rights law that constituted part of Paraguay's legal arsenal, and she wondered if that meant that article 9, paragraph 9, of the Covenant, or indeed the specified articles of the Constitution, could operate independently in the absence of specific laws. She would also appreciate clarification as to whether such new laws, when enacted, would have to comply with both the Constitution and the Covenant, and whether the courts would have the power to strike down any that did not strictly conform.

17. More comprehensive information should be given about action taken against the perpetrators of abuses under the former regime, such as those referred to in paragraphs 22 and 159 of the report, and in particular about the extent of compensation to victims. More details should also be given regarding the country's transition process. Information received from non-governmental organizations suggested that the police, the army and even the judiciary were undergoing the transition to the rule of law with difficulty and that there were problems with the depoliticization of institutions.

18. The report provided encouraging information regarding human rights education, but more commitment was needed at the highest levels of government. Women's rights appeared to be well safeguarded in articles 48, 60 and 61 of the Constitution but she wondered whether they were realized in practice. There seemed, for instance, to be a low level of participation by women in the political process (para. 82 of the report) as well as a discriminatory application of the penalties for rape and murder (paras. 78-80), indicating that attitudes needed to be changed and legislation reformed if the Constitution itself was to have full effect. The data provided in both the core document and the report regarding the high rate of maternal mortality and the high incidence of illegal abortion also conflicted with the guarantees under article 61 of the Constitution.

19. There seemed to be a high drop-out rate and level of illiteracy in Paraguay, particularly among the indigenous people. She requested information on measures to ensure that all children had access to education and to guarantee compliance with child labour laws. The reporting State should explain why the marriage age for girls was lower than that for boys. Further details would be appreciated on the legal limits on pre-trial detention in Paraguay. Reports indicated that many people were held beyond the 48-hour period referred to in paragraph 194 of the report before appearing before a court.

20. Mrs. MEDINA QUIROGA commended Paraguay for the progress it had made in improving its human rights situation and in incorporating economic, social and cultural rights into its Constitution. Positive efforts were being made to investigate past human rights violations.

21. Paragraph 47 of the report implied that there was discrimination against children born out of wedlock since they did not have the same rights as those born in wedlock with regard to inheriting joint property. According to paragraph 79, criminal acts of rape and abduction were regarded as offences against public propriety and decency, and a discriminatory classification of women who had been raped and abducted still existed, since harsher penalties were applied in the case of married women. Such acts constituted above all a violation of the physical integrity of women, and she urged the reporting State to revise its legislation in that regard.

22. It would be useful to know whether women in Paraguay had access to family planning programmes and birth control methods. Paragraph 81 of the report indicated that different penalties were enforced for abortion and that it was only the woman and the abortionist, not the male progenitor, who were punished. If abortion was to be considered an offence at all, there should be no discrimination in the treatment of the pregnant woman and the male progenitor.

23. Paraguay was to be commended for having imposed constitutional limits on the declaration of a state of siege. Further information should be provided on the reasons why women had been excluded from political posts (para. 84). The reporting State should also explain the general criteria for determining penalties in criminal law and indicate whether a law which provided for the death penalty could be declared unconstitutional by a judge or the Supreme Court.

24. Paragraphs 151 and 229 of the report stated that the purpose of the Paraguayan prison system was to keep in custody untried prisoners who were under investigation and persons who had been sentenced to imprisonment. That seemed to violate the right to liberty set out in article 9 of the Covenant. Pre-trial detention amounted to punishment and should be applied as an exceptional measure, particularly in view of the presumption of innocence on the part of detainees awaiting trial.

25. Paragraph 217 of the report indicated that there were fundamental differences in the treatment of convicted prisoners and persons awaiting trial. It was her impression that Paraguay was not complying with the provisions of the Covenant governing treatment of convicted prisoners, since persons awaiting trial enjoyed privileges that should be accorded to all detainees. She agreed with Mr. Bán on the disadvantage of appointing judges for five-year periods (para. 294). Paragraph 297 of the report indicated that court hearings should be public unless it was deemed necessary or advisable that they should be private. The reporting State should explain who decided whether a hearing would be private and whether an adult could choose not to have a private hearing. It would be useful to know what was meant by the statement in paragraph 311 of the report that "every natural person having legal capacity may, personally in legal proceedings, exercise his own rights".

26. Further details would be appreciated with regard to the current role of the Roman Catholic Church in Paraguay. Referring to paragraph 452 of the report, she requested additional information on the operation of private radio and television transmitters in Paraguay. Lastly, paragraph 323 of the report implied that a defendant over the age of 10 but under 15 could be declared capable of committing an offence and prosecuted under the law, and she wished to know if that was the case.

27. Mr. PRADO VALLEJO commended the Government of Paraguay for the great progress it had made in its transition to a democracy and in ensuring respect for human rights. However he, too, sought further information on the role played by the Catholic Church in Paraguay. Paragraph 429 of the report stated that the Civil Code granted the Catholic Church legal status in a different way from that of other religions, which suggested that discrimination might be practised against the other religions.

28. Paragraphs 5 and 6 of the report referred to the possibility under the Constitution of denouncing human rights treaties. The Committee would appreciate further information in that regard and would like to know whether there were rights that could be suspended in emergency situations. Article 4 of the Covenant stipulated that there were certain rights which could not be suspended. Were those rights guaranteed under Paraguayan law?

29. Numerous human rights violations had been reported during the dictatorship of General Stroessner. The reporting State should indicate whether those violations had been investigated and whether the persons found guilty of violations had been punished and the victims compensated.

30. There were reports of the mistreatment of conscripts in the Paraguayan armed forces and the recruitment of minors for military service. Additional information should be provided on those two points and on the recourse available to conscripts who were mistreated. There seemed to be cases in which the status of conscientious objectors was not respected by the military forces in Paraguay. He wondered whether that was the case and whether the text of the Covenant had been disseminated in order to inform the general public about the Government's obligations and steps taken to comply with them. Additional information should also be provided to explain why students in military and police institutions were prohibited from voting in elections.

31. Lastly, it would be useful to have further details on bilingual education in Paraguay. The phrase in paragraph 571 (c) of the report "and therefore avoid producing functional illiterates by literacy in Guaraní alone" should be explained.

32. Mr. MAVROMATTIS said that Paraguay had given ample evidence of its serious intention to establish democracy in the country. It was obvious, however, that much remained to be done to eliminate the "dead wood" remaining in the national legislation which was inconsistent with the new Constitution. He inquired whether judges and officials who had served during the period of dictatorship remained in office and whether they were likely to impede progress.

33. Paragraphs 5 and 6 of the report suggested that it was rather easy under the Constitution to denounce human rights treaties. Since there was no provision under the Covenant for denunciation, that should be looked into. It would be interesting to learn whether there was any overlapping between habeas corpus and the remedy of amparo in Paraguay, since both were provided for under the law.

34. Paragraph 62 of the report dealt with cohabitation and stated that "after a 10-year period, the children of the union shall be considered as having been born in wedlock". That implied that there was discrimination against children born before the 10-year period had passed. Paraguayan laws seemed to provide different sentences for the rape or abduction of married women. He felt that it would be better to allow the judiciary to take into consideration aggravating and extenuating circumstances in sentencing rather than imposing minimum and maximum penalties under the law. The reporting State should indicate whether suicide was a crime in Paraguay and explain the rules governing the use of lethal force by the police and security forces.

35. According to paragraph 81, abortion was a very serious problem in Paraguay because of the number of deaths among expectant mothers. He inquired whether Paraguay had considered decriminalizing abortion and reviewing its existing abortion laws. Referring to paragraph 263 of the report, he inquired whether the phrase "maintenance duties" applied to both mothers and children and requested an explanation of the term "judicial security".

36. Paragraph 133 of the report implied that the death penalty continued to exist under anachronistic but still operative criminal law. The reporting State should explain whether the death penalty had really been abolished and what was being done to amend its criminal law in that area.

37. An independent judiciary was essential for ensuring the exercise of human rights and fundamental freedoms. It would be useful to have further information on how the independence of the judiciary was guaranteed in Paraguay. Whereas neither the election of judges nor their appointment for short terms was conducive to ensuring an independent judiciary, the irremovability of judges was one of the best ways of doing so.

38. According to paragraph 323 of the report, persons under the age of 18 might not testify except in certain circumstances. The reporting State should explain why that provision was considered necessary. Lastly, he requested further information on freedom of association and legislation to guarantee the rights of trade unions in Paraguay.

39. Mr. Aguilar resumed the Chair.

40. Mr. EL-SHAFEI commended the reporting State for submitting one of the best initial reports the Committee had ever received. At the same time, the Committee would welcome further information regarding any factors that had impeded Paraguay's efforts to implement the Covenant. Also, the initial report had been prepared in February 1994 and therefore required updating.

41. With regard to the question of procedures for denouncing international human rights treaties set out in article 42 of the Constitution, it was unclear whether that article discussed procedures for denouncing treaties in general or specifically human rights treaties. If article 42 applied only to human rights treaties, it was difficult to understand why that distinction had been made. In addition, it would be interesting to learn whether the procedures in question had to be considered by one or both chambers of Congress.

42. The reporting State should clarify whether the law to regulate the terms and conditions of habeas corpus, referred to in paragraph 18, subparagraph 3, of the report, had already been issued; if so, it would be useful to have a full account of that law. If the Government had been compelled to declare a state of emergency during the period covered by the report, it would be useful to learn what rights, if any, had been suspended during that period.

43. The Committee wished to know if the Covenant had been taken into consideration when the First Manual for Human Rights Curricula had been devised in cooperation with the Inter-American Institute of Human Rights and if there had been any other efforts on the part of the authorities to disseminate information regarding the Covenant.

44. He sought clarification as to why children born out of wedlock had the right to inherit parents' personal assets but not their joint property (para. 47). Additional details on how agrarian reform would be encouraged with the participation of peasant women on an equal footing with men (para. 38) should be provided, as well as more information regarding the participation of women in political life. With regard to the statutory provision to promote equality contained in the Electoral Code (para. 82), the reporting State should explain what it was doing to correct gender discrimination in the political party structure and whether it considered such discrimination acceptable.

45. It was noted in paragraph 159 of the report that there had been delays in handing down the final sentences in cases against many public officials and many incidents affecting the normal course of those proceedings. He requested clarification regarding those incidents and statistics as to the number of cases delayed, the length of delays and the prospects for the prompt processing of cases in the future.

46. Lastly, the Committee would welcome more details regarding the life of indigenous people in Paraguay.

47. Mr. KLEIN said that the Committee would be interested in learning more about the difficulties the authorities had encountered in restructuring the police force and the judiciary. Specifically, the reporting State should indicate how the independence of judges was ensured, whether there were any problems of corruption among judges and if any training programmes had been provided for judges who had been appointed under the old regime but continued to hold posts under the new Government. Similarly, he asked if there had been progress in Paraguay's efforts to educate the police about human rights and if there had been any instances of corruption among police officers. He also wished to know what progress had been achieved in the criminal prosecution of

former officials and whether any compensation was being provided for the victims of the previous regime.

48. With regard to the situation in prisons, the report indicated that there was no separation of convicted prisoners and persons awaiting trial, a violation of the Covenant. The reporting State should clarify whether there was any separation of juvenile and adult prisoners in prisons. Finally, he wondered whether there was not a better means of providing incentives for the social rehabilitation of adult prisoners than the system of rating prisoners described in paragraph 240 of the report.

49. Mr. KRETZMER commended the reporting State on the excellence of its report but agreed with Mr. El-Shafei that it lacked information regarding any practical mechanisms that may have been instituted to protect the individual. Since the Committee had continued to receive reports from non-governmental organizations and the United States Department of State of complaints of continued police violence against adults and minors, he wondered whether any specific mechanisms for administrative bodies had been established to deal with such complaints at the national level or if complaints were handled only when they reached international human rights organizations.

50. It was unclear whether there were any conditions for converting arrest into pre-trial detention other than those set out in paragraph 205 of the report. Subparagraph (b) of that paragraph also needed clarification. Lastly, the report made no mention of article 20, paragraph 2, of the Covenant; in that connection, he wondered whether there were any laws in Paraguay prohibiting any advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence.

51. Mr. BUERGENTHAL inquired whether it was possible to suspend other rights, in addition to the right not to be detained, during a state of emergency and to what extent those rights were rights that could not be suspended under the Covenant. He wished to know the purpose of a provision in the Paraguayan Constitution that stipulated that suspects had the option of being detained or leaving the country and whether that provision implied the forced expulsion of a citizen from the country. He asked whether habeas corpus applied also to individuals who were being held by the military and whether there was a provision in the Code of Military Criminal Procedure regarding that issue. Paragraph 203 of the report made no reference to military tribunals in the hierarchy of judicial power. It would be interesting to learn whether military tribunals had jurisdiction over civilians during peacetime or only during a state of emergency and whether it was possible to appeal a decision handed down by a military tribunal to the Supreme Court. Finally, he inquired whether prisoners were informed of their rights, many of which were detailed in the report, and if prisoners were told when judges visited prisons and were allowed to communicate freely with them.

52. Mr. ANDO commended the quality of the report and inquired whether the Covenant had been directly invoked in the courts. He sought clarification regarding the treatment of political prisoners, specifically with regard to the reference in paragraph 98 of the report to "clean and healthy facilities not intended for ordinary offenders". He wondered whether that meant that persons

detained under a state of emergency went to better prisons or that the prisons intended for ordinary offenders were not clean and healthy facilities.

53. Like Mrs. Medina Quiroga, he was curious as to the relationship between the length of pre-trial detention and the presumption of innocence and asked for further clarification regarding time-limits for trials and how such limits affected both criminal and civil proceedings.

54. He agreed with Mr. Mavrommatis regarding the issue of abortion and suggested that the reporting State should provide more specific information on that topic. It was also unclear whether there was complete de jure equality between spouses, particularly with regard to the right to matrimonial property and the transmission of the nationality of a child's parents when Paraguayan men or women were married to foreigners.

55. Finally, in the area of freedom of expression and association, paragraph 485 of the report told the minimum number of persons required to found a trade union. He wished to know whether it was possible for workers at small factories to organize unions within an industrial sector.

56. With regard to participation in national political life, he wondered whether the fact that members of the armed and police forces and students of the Military and Police Training Institutes were unable to vote might possibly lead to a coup d'état if such persons had political grievances against a particular Government. There ought to be some way to take the views of such persons into account.

57. Additional information concerning the five young Paraguayan conscientious objectors (para. 438) would be welcome. Clarification of the apparent contradiction between paragraphs 39 and 40 of the report, concerning the right of foreigners to vote, was also needed.

58. Paragraph 558 indicated that indigenous peoples were able to regulate their communal life according to their customs, within the bounds established by the Constitution and universally recognized human rights. He wondered whether any problems had arisen, since some of those customs were not consistent with the provisions of the Constitution - for example, those relating to equality of the sexes, freedom of movement and custodial rights pertaining to children.

59. Mr. POCAR commended the delegation on its excellent report and welcomed the progress made thus far in bringing national legislation into line with the Covenant.

60. Further details would be appreciated regarding measures taken in respect of persons who had been involved in the military dictatorship or had held posts of responsibility during the military regime. He would also appreciate additional information on the status of any relevant judicial proceedings, particularly since certain articles of the Covenant, including article 9, paragraph 5, could apply to events which had occurred prior to the country's ratification of the Covenant. Moreover, allowing persons who had been involved in grave violations of human rights to remain in power might adversely affect the current human rights situation. He also wished to know what was being done to deal with

violations of articles 7 and 9 of the Covenant that had been reported by non-governmental organizations after the ratification of the Covenant.

61. With reference to paragraph 12 of the report, he requested details regarding the "few relevant examples" of case law illustrating the incorporation of human rights law into national legislation. As to the new guarantee of habeas data, information would be welcome concerning the five new trials mentioned in paragraph 23; he wondered whether they related to the 100 victims of repression mentioned in that paragraph.

62. The reporting State should indicate whether any restrictions were placed on the enjoyment of fundamental human rights by foreigners apart from the fact that they could not exercise certain political rights. With respect to article 4 of the Covenant, he wished to know whether he was correct in assuming that only the rights enumerated in the fifth paragraph of article 288 of the Constitution could be suspended during a state of emergency.

63. Paragraph 317 of the report stated that article 105 of the Code of Civil Procedure stipulated that Spanish was the official language in civil procedures, but that witnesses could also express themselves in Guaraní. That appeared to contradict article 140 of the Constitution establishing Spanish and Guaraní as the official languages. It was unclear how the right of persons in detention to have an interpreter if necessary was compatible with article 140. He also wished to know what minorities lived in Paraguay, the languages they used and how those languages were protected.

The meeting rose at 5.50 p.m.

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Fifty-third session

SUMMARY RECORD OF THE 1393rd MEETING

Held at Headquarters, New York,
on Thursday, 23 March 1995, at 10 a.m.

Chairman: Mr. AGUILAR

later: Mr. BÁN
(Vice-Chairman)

later: Mr. AGUILAR
(Chairman)

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95-80480 (E)

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of New Zealand (CCPR/C/64/Add.10 and HRI/CORE/1/Add.33)

1. At the invitation of the Chairman, Mr. Keating, Mr. Rata and Ms. Rush (New Zealand) took places at the Committee table.

2. Mr. KEATING (New Zealand), introducing the third periodic report of New Zealand (CCPR/C/64/Add.10), referred to a number of significant developments during the reporting period which had enhanced the legislative and administrative framework for the protection of human rights. In preparing the third periodic report, New Zealand had taken into account the observations made by the Committee during the consideration of its second periodic report. The review period had witnessed the adoption of the Abolition of the Death Penalty Act 1989, which implemented the second Optional Protocol of the Covenant; the New Zealand Bill of Rights Act 1990, which made protection of human rights statutory; the Privacy Act 1993; the Human Rights Act 1993, which consolidated the Race Relations Act 1971 and the Human Rights Commission Act 1977; and the Employment Contracts Act 1991, which enabled employees to choose their representatives and to opt for either collective or individual negotiation of employment contracts.

3. At the international level, New Zealand had acceded to the first Optional Protocol to the Covenant, with effect from August 1989; ratified the second Optional Protocol to the Covenant, with effect from July 1991; ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in December 1989; and ratified the Convention on the Rights of the Child in March 1993. During the review period, the rights of the Maori were further strengthened, in particular, through the consideration of claims by the Waitangi Tribunal, the establishment of a new mechanism for direct negotiation of Maori claims and the introduction of the Maori Option as part of electoral reforms. The electoral reforms had also included the adoption of a new system of mixed member proportional representation in Parliament. During the same period, refugee application procedures had been reformed and a Refugee Status Appeals Authority had been established.

4. Referring to developments since January 1994, he said that the Court of Appeal, in two decisions, had held that the New Zealand Bill of Rights Act could give rise to claims for civil damages. (The Bill itself contained no specific provisions in that regard.) In 1994, the Privacy Commissioner had continued his work and a Government Computer Services Information Privacy Code and Health Information Privacy Code were adopted. The Copyright Act 1994 provided additional protection for privately commissioned photographs and films. Under the Penal Institutions Act 1994, the private sector could provide services under contract with the Crown. The Act also guaranteed that the rights of all inmates would remain subject to the New Zealand Bill of Rights Act.

5. The Health and Disability Commissioner Act 1994 protected the rights of health and disability service consumers and facilitated the resolution of complaints relating to those rights. The Domestic Violence Bill, introduced into Parliament in December 1994, extended protection against a wide range of physical, sexual and psychological abuses to sex partners, family and household members and those living in close personal relationships. It also provided for state-funded counselling and stricter penalties. A bill to strengthen the protection of minors would be introduced into Parliament during its 1995 session. The bill would contain provisions prohibiting sexual activities by New Zealanders with children in other countries and prohibiting the organization in New Zealand of child sex tours in other countries.

6. Referring to the situation of the Maori, he said that a historic settlement of Maori fishing claims had been implemented by the Treaty of Waitangi Settlement Act 1992. Under the settlement, the Maori acquired effective control over the quota for fishing in New Zealand, valued at $286 million, through a joint-venture company. Their share of the purchase ($150 million) had been funded by the Government. They had also been allocated 20 per cent of the new species (at an estimated value of $22 million) introduced into New Zealand's quota management system. Under the terms of the Maori Fisheries Act 1989, the Maori Fisheries Commission had been allocated quota and cash having an estimated value of $174 million. The 1992 Settlement Act also provided for the recognition and protection of non-commercial customary fisheries rights.

7. Proposals had also been made for resolving other Maori grievances under the Treaty regarding claims to land and natural resources. The Government was currently engaged in consultations with the Maori about those proposals. While the proposals in their current form had not been totally satisfactory, the need for continued dialogue was recognized. In January 1995, the Government had initiated reform of the arrangements under which certain Maori land had been leased. Under the reform, tenants no longer had the right to renew their leases perpetually and rents had been revised to market levels.

8. Under the Maori Option, Maori could be transferred to the Maori electoral roll. As a result, one additional Maori seat would be created for the first election under the new proportional representation system. Problems faced by Maori in the areas of employment, education and health were being addressed. Efforts were also being made to promote awareness of Maori concerns and appreciation of their special place in New Zealand society. In New Zealand, the first year of the International Decade of the World's Indigenous People had been designated Maori Language Year. The Year would be marked by community and government-sponsored activities, including a comprehensive study of the Maori language.

9. New Zealand's ratification of the Covenant in 1978 had been extended to the Cook Islands, Niue and Tokelau. The Cook Islands and Niue, as self-governing Territories in free association with New Zealand, were responsible for implementing their obligations under the Covenant within their own territory. As they had limited resources at their disposal, they had been unable to complete their reports on time for the current session of the Committee but would do so at the earliest possible date.

10. The most significant developments in Tokelau, New Zealand's last remaining Non-Self-Governing Territory, included the relocation of the Tokelau Public Service and administration of Tokelau from Western Samoa to Tokelau; and the establishment of local governments through, inter alia, the establishment in 1992 of the Council of the Faipule, which acted as an executive agency to the General Fono, the paramount political institution of Tokelau. He also mentioned the adoption of the Tokelau Administration Regulations 1993, which delegated the powers of the Tokelau Administrator to the General Fono; the delegation of powers of the New Zealand State Services Commissioner to the Tokelau Public Services Authority; and the development of legislation by the General Fono. Efforts were also under way to establish a new crimes regulations system adapted to Tokelauan customs.

11. In June 1994, the General Fono had adopted the National Strategic Plan, which expressed Tokelau's desire to be self-reliant to the greatest extent possible. In July, the people of Tokelau had informed a delegation of the United Nations Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples that Tokelau was considering the adoption of an act of self-determination and of a constitution, and that it had a strong preference for free association with New Zealand.

Constitutional and legal framework within which the Covenant is implemented, right to self-determination, state of emergency, non-discrimination and equality of the sexes (articles 1, 2, 3, 4 and 26 of the Covenant) (section I of the list of issues)

12. The CHAIRMAN read out section I of the list of issues concerning the third periodic report of New Zealand, namely: (a) the resolution of inconsistencies between the provisions of the Covenant, which had not been incorporated into domestic law, and any provisions of domestic law, including the Bill of Rights (paras. 46-48 of the report), and the legal status of any views regarding New Zealand adopted by the Committee under the Optional Protocol; (b) the legal status of the Bill of Rights, in view of the fact that it had not been entrenched and that, consequently, courts were disabled from striking down legislation on the ground of inconsistency with its provisions, and New Zealand's intentions of incorporating it; (c) description, in the light of the discussion on that subject during consideration of the second periodic report, of the experience gained in granting foreign nationals the right to vote after they became permanent residents in New Zealand, and rights of re-entry of non-nationals who were permanent residents; (d) the effects of the repeal of employment equity legislation and the introduction of the Employment Contracts Act 1991 (para. 112 of the report) on the earnings level of women and their participation in the workforce, and particular effects on Maori women and Pacific Islander women; (e) effect of section 151 (2) of the Human Rights Act 1993, which appeared to postpone the operation of the new prohibited grounds of discrimination until the year 2000, and its compatibility with the Covenant; (f) New Zealand's intentions of reviewing the extent of its reservations to the Covenant in the light of the Committee's general comment No. 24 (52); (g) the extent of New Zealand's remaining jurisdiction over the Cook Islands and Niue (para. 2 of the core document (HRI/CORE/1/Add.33)) and, in view of the fact that the part of the second periodic report relating to the Cook Islands and the part

of the third periodic report relating to Niue had not yet been submitted, measures envisaged by the authorities to comply with the reporting obligations under article 40, paragraph 1 (b), of the Covenant; (h) experience thus far with the devolution of certain legislation-making power to the General Fono of Tokelau (paras. 145-152 of the report); (i) whether the International Terrorism (Emergency Powers) Act 1987 had been repealed following comments to that effect by the Committee in April 1989 and the adoption of similar recommendations by the New Zealand Law Commission in 1991 (paras. 28-30 of the report).

13. Mr. KEATING (New Zealand), responding to the issues raised in section I (a), said that in a recent case, the Court of Appeal had noted that one of the purposes of the Bill of Rights Act 1990 was to reaffirm the Covenant - indeed, that was explicitly stated in the Act - and had found that civil damages could be claimed for breaches of the Bill of Rights Act. The Court had also relied on the availability of remedies under the Covenant. Thus, the provisions of the Covenant and the proceedings of the Human Rights Committee could be taken into account by New Zealand courts in implementing domestic law, in particular the Bill of Rights.

14. Concerning section I (b) of the list of issues, he said that the Government had initially proposed entrenchment of the Bill of Rights as supreme law but public reaction had been unfavourable. In general, New Zealand society was reluctant to accept the concept of entrenchment and, in that particular case, was wary of transferring power from elected representatives to non-elected judicial officers. Accordingly, on the basis of public hearings, the Parliament had decided that the Bill of Rights should be enacted as an ordinary statute which could be amended or superseded.

15. With regard to section I (c) of the list, he said that, under the current Electoral Act 1993, all New Zealand citizens and permanent residents were eligible to vote on an equal basis. That had also been the case under the previous Electoral Act, which had been in force since 1956. Concerning the right of re-entry, permanent residents who were not citizens were eligible, on their departure from New Zealand, to apply for a returning residence visa valid for multiple re-entries within a four-year period. If they were absent for more than four years, they could still apply for a returning residence visa but its validity would be limited if they had spent less than two of those four years in New Zealand.

16. Turning to section I (d), he said that his Government believed that encouraging employers to adopt equal employment opportunity policies and practices was more effective than prescriptive legislation. The Government actively promoted equal employment opportunity practices in the private sector. In 1991, it had established the Equal Employment Opportunities Trust, designed to promote equal employment opportunities as a form of good business management. The Trust was jointly funded by the Government and employers and had developed a database of equal employment opportunity resource materials available to interested individuals or groups. It promoted its resources and services through employer and employee networks. The Government had also established an Equal Employment Opportunities Fund, which made funding available on the basis of competitive bidding for projects to promote equal employment practices by private-sector employers. Under the State-Owned Enterprises Amendment Act and

the State Sector Act, state-owned enterprises and regular public services were required to maintain equal employment opportunity programmes. It was too early to determine whether the new Employment Contracts Act had had any impact on women in the workplace. However, average earnings statistics suggested that, in the past five years, the gender earnings gap had remained virtually unchanged. Women continued to earn about 80 per cent of men's hourly earnings. As earnings data was not disaggregated on the basis of ethnicity, no statistics were currently available on the particular effects of the Employment Contracts Act on Maori and Pacific Islander women.

17. Referring to section I (e) of the list of issues, he said that the Human Rights Act 1993 had introduced new grounds of non-discrimination, such as age, disability, employment status, family status and sexual orientation into New Zealand legislation. Currently, all legislation was being reviewed in order to determine whether it complied with the new criteria. The review would be completed by 1999. In addition, under section V of the Human Rights Act, the Human Rights Commission was reviewing all legislation and government policies and practices in order to identify unlawful discrimination. It would submit a report on its findings to the Minister of Justice by 31 December 1998.

18. Responding to the issues raised in section I (f), he said that, currently, no formal procedure existed for reviewing reservations to international instruments. However, the Government did engage in periodic reviews, as evidenced by the withdrawal of one of its reservations to the Convention on the Elimination of All Forms of Discrimination against Women. New Zealand believed that the reservations it had made to the Covenant and to general comment No. 24 (52) were not incompatible with the object and purpose of the Covenant. It had no intention of withdrawing those reservations at the current juncture. The delegations would make specific comments on articles 12 and 22 in answer to the relevant questions of the Committee.

19. With reference to the question contained in section I (g) of the list of issues, he explained that the Cook Islands and Niue had exercised their right to self-determination and were fully self-governing while in free association with New Zealand. They therefore had exclusive legislative and executive jurisdiction over their own territory and submitted their own reports to human rights bodies. New Zealand provided assistance to the Cook Islands and Niue in the drafting of the relevant reports. He asked the Committee to bear in mind that the reports would often be late owing to the limited administrative resources of the islands.

20. Regarding section I (h), he said that the substantial executive powers of the Tokelau administrator, formerly a New Zealand official, had been transferred to the General Fono; a full-time executive agency had been established to assist the General Fono; the New Zealand state services commissioner had delegated his powers of appointment to two Tokelau public service commissioners; special commissioners had been appointed with the task of reviewing Tokelau laws in order to reflect local customs and needs; and a delegation from the United Nations Special Committee on decolonization had visited Tokelau to learn about the islanders' move towards self-determination while remaining in free association with New Zealand.

21. In answer to the question about the proposed repeal of the International Terrorism (Emergency Powers) Act contained in section I (i), it was explained that the issue had been referred to the New Zealand Law Commission. The Commission had adopted a recommendation that the Act should be repealed only when it had completed its deliberations on other related issues such as police questioning, powers of search and arrest, and powers of entry. The New Zealand Government hoped to receive those recommendations from the Law Commission in the near future, and when it had done so it would proceed to repeal the Act.

22. Regarding measures that had been taken to disseminate information on the rights recognized in the Covenant and the issue of whether national institutions and the public had in any way been involved in the drafting of the third periodic report, he said that the New Zealand Human Rights Commission had been mandated to promote by education and publicity respect for and observance of human rights, specifically in accordance with relevant United Nations instruments. Although no informational materials had yet been issued, the Human Rights Commission was addressing individual inquiries. It also planned to publish a guide on lodging communications with the Human Rights Committee under the Covenant when national legal remedies had been exhausted. The third periodic report had been prepared through extensive consultation between Government departments and ministries. A wide range of quasi-governmental bodies had also been involved, such as the Maori Language Commission, the Human Rights Commission, the Office of the Privacy Commissioner, the Police Complaints Authority, the Public Health Commission and the State Services Commission. The New Zealand public was kept informed of the third periodic report through publications and bulletins from the Ministry of Foreign Affairs and Trade.

23. Mrs. EVATT congratulated the New Zealand delegation on its report and noted that there had been improvement with respect to all articles of the Covenant. With regard to paragraph 14 of the report, she asked whether any inquiries into human rights infringements had actually been undertaken or contemplated by the Human Rights Commission. If so, the Committee would be grateful for further information about the kinds of issues involved.

24. She noted that the New Zealand Bill of Rights was silent on the question of legal remedies, and requested the reporting State to provide further information about remedies that were available. She indicated that the issue had direct relevance to the communications procedure of the Human Rights Committee, and asked what provisions had been made for mechanisms to ensure that the Committee's recommendations were complied with in domestic law.

25. On the issue of equal employment opportunity provisions and the repeal of earlier laws which had been replaced by the voluntary system, she said the Committee would be interested to learn whether the new system was being systematically monitored to ensure that wage differentials between men and women were actually being reduced. She also inquired how gender-neutral job evaluation was to be carried out under the new system and what machinery was in place for dealing with violations.

26. Mrs. HIGGINS asked for more details about the proposals for settlement of claims by the Waitangi Tribunal, and specifically whether the proposals represented a capping with reference to time or the financial resources that

would be made available to settle claims. It was also unclear whether the proposals would be imposed in spite of continuing disagreement by the Maori leadership. On the legislation pertaining to fisheries claims settlements, the reporting State should clarify the passage in the relevant Act which stated that treaty obligations would continue but rights in the Maori would not.

27. With reference to section 4 (b) of the New Zealand Bill of Rights, which disabled courts from striking down legislation on the ground of inconsistency with the Bill's provisions, she wondered why more of the Covenant had not been incorporated in the Bill. Furthermore, the report indicated that certain pieces of legislation had gone forward notwithstanding the Attorney-General's reservations about their compatibility with the Bill of Rights. The Committee would appreciate further information about any legislation regarded as problematic in relation to the Bill of Rights and thus by definition to the Covenant as enshrined therein.

28. Lastly, regarding the question of the legal status of any views regarding New Zealand adopted by the Committee under the Optional Protocol as contained in section I (a) of the list of issues, the Committee would appreciate further information on the mechanisms whereby anyone who was in principle entitled to a certain remedy could seek that remedy.

29. Mr. Bán, Vice-Chairman, took the Chair.

30. Mr. LALLAH, with reference to section I (a) of the list of issues, said that the Committee was not so much concerned about future interpretations that the courts might give, but rather about what action would be taken on the views expressed by the Committee.

31. On the issue of the Bill of Rights, he requested more information about the criticisms which had been made of that instrument within New Zealand. He also noted that section 4 (a) of the Bill appeared to give a lower status to the Bill and the Covenant than to ordinary law, and asked the reporting State to comment further on that point.

32. He said that paragraph 5 of the report had some bearing on article 2, paragraph 3 of the Covenant since it indicated that the right of appeal to the Privy Council might be abolished in the near future. New Zealand should clarify what if any appellate body would replace the Privy Council. He also pointed out that under article 2, paragraph 3, of the Covenant, States parties were obliged to ensure access to effective remedies; given the imperfections of section 4 of the Bill of Rights, he wondered how the New Zealand Court of Appeal would find ways to uphold claims for damages arising from violations of the Bill.

33. On the topic of entrenchment of the Covenant, he inquired whether the New Zealand Government had considered putting the whole issue to a referendum rather than simply leaving it to political leaders.

34. Referring to paragraph 15 of the third periodic report, he failed to understand why the words "or other status" as contained in article 2, paragraph 1, of the Covenant had been omitted from the list of grounds for

non-discrimination, and invited the reporting State to share its interpretation of that phrase with the Committee.

35. Paragraph 26 (b) of the report stated that payment of maintenance was enforced by a Department and that a Family Court could then review and reassess the amount of maintenance payable at the request of either parent only on very restricted criteria. More information was needed on the precise nature of those restrictive criteria, as was an explanation of why a judicial recourse appeared to be determined and limited by administrative guidelines.

36. Mr. MAVROMMATIS asked, if the purpose of the Bill of Rights Act was to affirm New Zealand's commitment to the Covenant, why it had omitted any specific reference to the distinctions prohibited in article 2, paragraph 1, of the Covenant. If the Committee were to recommend compensation to an individual on the basis of a communication, he was curious to know whether mechanisms already existed for compensating the author, or whether a law would have to be enacted to give effect to the decision.

37. Mr. PRADO VALLEJO said that New Zealand should be commended for the effective steps it had taken to guarantee human rights through improvements in its domestic legislation. Nevertheless, a few concerns remained. From his reading of paragraph 6 (f) of the report, it seemed that judges must enforce laws that were incompatible with international human rights instruments. Apparently the Covenant was subordinate to New Zealand law, and, contrary to article 2 of the Covenant, if the Covenant and internal law were in conflict, the law would be applied. That led to the question of the primary obligations of States parties to harmonize their legislation with international law.

38. He would be interested in hearing about the current legal status of the law on terrorism. Further clarification was also required of the scope of the provisions against indirect discrimination mentioned in paragraph 19 of the report and what was meant by "good reason". More information would also be welcome on unlawful grounds for discrimination and the jurisprudence in that area. He wished to know if the Human Rights Commission had the power to initiate action in favour of human rights or against violations.

39. Efforts had been made to respect the rights of minorities and indigenous communities in the law, but in practice, discrimination still existed in education and employment opportunities. He wondered if any special programmes had been established to prevent that type of discrimination.

40. Mr. KRETZMER said that, in contrast to the Covenant, both the Bill of Rights Act and the Human Rights Act contained a closed list of grounds for discrimination. It could be argued in court that such limitation was intentional and that only certain grounds for discrimination would be admitted. More elaboration on the background of the Bill of Rights Act and the reasons why language was not mentioned among the potential areas of discrimination was needed. Regarding the question of discrimination in employment, section 25 of the Human Rights Act, on work involving national security, gave almost complete discretion to the national security authorities to deny employment on the basis of religious or ethical beliefs, political opinion, disability or national origin. He wondered how such decisions of the national security authorities

were supervised. Section 26, concerning work performed outside New Zealand, could appear to legitimize laws, customs and practices of other countries that were incompatible with the Covenant and other human rights treaties.

41. Mr. KLEIN said that, in his view, the Covenant deserved to be more deeply entrenched in New Zealand's legal system. The concept of the sovereignty of Parliament would not exclude giving the Bill of Rights Act precedence over other acts as long as they could be repealed by Parliament. In that context, he drew attention to the obligations of States parties under article 2 of the Covenant.

42. Section 5 of the Bill of Rights Act served as a general guideline for the justified limitations of rights, but he wondered whether it might open the way to placing limits on human rights that were not limited under international covenants. For example, it might be used as a justification for the limitation of the rights of minorities under section 20, whereas article 27 of the Covenant did not place any special limitations on such rights. He requested clarification of the understanding of the clause "demonstrably justified in a free and democratic society" in New Zealand jurisprudence and on the role of the principle of proportionality in its legal system.

43. Mr. ANDO asked whether the village electoral process in Tokelau had any special characteristics as compared with the electoral system in New Zealand. He would also like to learn more about any conflicts the Government had encountered between the Covenant and customary law in Tokelau.

44. Mr. EL-SHAFEI welcomed the fact that the report had taken into account the views and observations which the Committee had expressed when examining the second periodic report from New Zealand, and that it responded to most of the observations made by the Committee at that time.

45. The report reflected a number of significant developments which had taken place in a short period, such as the passage into law of the New Zealand Bill of Rights Act 1990 and the accession of New Zealand to the first and second Optional Protocols to the International Covenant on Civil and Political Rights. Some additional information was still needed regarding the application of the terms of the Covenant in the Non-Self-Governing Territory of Tokelau.

46. He would welcome further information regarding the enactment of the Bill of Rights, as well as evidence to show that New Zealand was fully committed to systematic review and amendment of its laws in order to make them compatible with the provisions of the Covenant.

47. Mr. Aguilar resumed the Chair.

48. Mr. BUERGENTHAL, referring to paragraph 8 of the report, requested additional information regarding areas in which it was thought that the Bill of Rights might conflict with other legislation. That could have some bearing on the issue of exhaustion of domestic remedies. Also, referring to paragraph 14 of the report, he asked what was the relationship between the role of the Attorney-General and the duty of the Human Rights Commission to report to the Prime Minister, and whether there was any interaction between the two.

49. He wondered whether in future it would be desirable for a representative of the Human Rights Commission to accompany the New Zealand delegation to meetings of the Committee, in order to report on any problems and difficulties encountered by the Commission.

50. Mr. POCAR congratulated the New Zealand delegation on the quality of the report, which fully complied with the Committee's guidelines. Referring to paragraph 18 of the report, which defined the areas in which discrimination was prohibited, he asked what would happen if a person were to be discriminated against in an area other than those mentioned.

51. He wondered under what law a citizen could seek remedy in a case of governmental discrimination in an area not covered by the Human Rights Act, such as pension rights.

52. Mr. KEATING (New Zealand), referring to a question asked by Mrs. Evatt regarding the implementation of the Committee's recommendations, said that if it were simply a matter of administrative action by an executive agency, the Government would consider that it had a duty to fulfil an international legal obligation. If the action to be taken was outside the province of the Government, the situation would be more complex: for example, if it was a matter of a decision of the Privy Council, which was the country's highest court, or a decision of Parliament, considerable difficulties could be involved, but the Government would of course, in accordance with its policy of fulfilling its human rights obligations, endeavour to find an appropriate solution, giving due weight to the recommendations of the Committee.

53. Referring to a question asked by Mrs. Higgins as to why only certain parts of the Covenant were reflected in the Bill of Rights, he said that the Government felt that it was not necessary to have a comprehensive, exhaustive code reflecting the entire Covenant. The characteristics of the Bill of Rights should be seen in the appropriate historical context, and the reasons for its enactment were part of a domestic political process. The New Zealand legal system was based on principles of the common law, and enactment of statute law took place only when the need for it was clear and identifiable. Those human rights standards which were not explicitly reflected in the Bill of Rights would continue to be complied with, just as they had been before the Bill of Rights had come into being.

54. Referring to questions regarding the Cook Islands and Niue, he recalled that New Zealand did not have executive competence in respect of those self-governing States. Although the New Zealand Government would do its best to use whatever means of persuasion and financial and material assistance were available to it, it would resist very vigorously the notion that it had any liability for a delict on the part of the Cook Islands or Niue.

The meeting rose at 1 p.m.

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HUMAN RIGHTS COMMITTEE

Fifty-third session

SUMMARY RECORD OF THE 1394th MEETING

Held at Headquarters, New York,
on Thursday, 23 March 1995, at 3 p.m.

Chairman: Mr. AGUILAR

later: Mr. EL-SHAFEI
(Vice-Chairman)

later: Mr. AGUILAR
(Chairman)

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of New Zealand (continued) (CCPR/C/64/Add.10; HRI/CORE/1/Add.33)

1. At the invitation of the Chairman, Mr. Keating, Ms. Rush and Mr. Rata (New Zealand) took places at the Committee table.

Constitutional and legal framework within which the Covenant is implemented, right to self-determination, state of emergency, non-discrimination and equality of the sexes (articles 1, 2, 3, 4 and 26 of the Covenant) (section I of the list of issues) (continued)

2. Mr. KEATING (New Zealand), replying to a question raised by Mrs. Evatt concerning legal remedies, referred to two cases in which the Court of Appeal had determined that damages could be sought in respect of a breach of the New Zealand Bill of Rights Act 1990. In one case the Court had found that, by its accession to the first Optional Protocol of the Covenant, New Zealand had accepted individual access by its citizens to the United Nations Human Rights Committee in the case of violations of rights under the Covenant for which they had been unable to obtain a domestic remedy.

3. With regard to Mr. Lallah's request for more information about criticisms of the Bill of Rights, he said that there had been considerable scepticism on the part of the public as to the desirability of concretizing human rights in law. A desire for flexibility had led to overt reluctance to the permanent entrenchment of a set of principles devised by a particular set of people at a particular time and reflecting a particular set of cultural values. Most of the early jurisprudence since the adoption of the Bill of Rights had related to criminal procedural issues, and had caused considerable public alarm, for the Bill of Rights was perceived as having created more loopholes for defendants in criminal cases.

4. As to the concern expressed regarding the status accorded to the Bill of Rights, he said that it actually had a slightly higher status than any other law, since it included a provision requiring the Attorney-General to make a statement to Parliament regarding any possible inconsistencies between proposed legislation and the Bill of Rights. Accordingly, any attempt to repeal it would most likely be subject to public scrutiny, which was not necessarily true for other laws.

5. No consensus had yet been reached as to what entity would replace the Privy Council upon its abolishment, although the Court of Appeal enjoyed a very good reputation and played a vital role in the judicial hierarchy. More information on the matter would be provided in the next periodic report.

6. The words "or other status" had not been included in the list of grounds for non-discrimination owing to the absence of a broad consensus in society as to what should be outlawed and to the perception that "other status" was too vague. The situation must be viewed in the context of the public's attitude towards the Bill of Rights, which he had outlined earlier.

7. Turning to the questions put by Mr. Prado Vallejo, he said that the fact that judges could not strike down legislation which ran counter to the Covenant did not constitute a weakness in terms of article 2 of the Covenant. New Zealand, like other common law countries, did not interpret article 2 of the Covenant as requiring the creation of a supreme law establishing the judiciary as the highest authority in matters relating to international legal obligations. It was for the Government to determine how the country's international legal obligations were to be met, whether by legislative measures, a mixture of legislative and judicial intervention, or administrative measures.

8. As to the legal status of terrorism legislation, he said that the Government was committed to replacing it, and would do so in conjunction with other important amendments to be proposed by the Law Commission to elements of the criminal law dealing with police powers. The final report of the Law Commission was expected to be ready fairly soon.

9. With regard to the issue of de facto discrimination, he pointed out that social and economic conditions differed among various elements of the population. However, his delegation could not accept the designation of those differences as constituting discrimination. The fact that the law provided that discrimination was illegal even as differing social and economic conditions existed in society did not itself mean that discrimination had occurred.

10. Turning to the questions put by Mr. Kretzmer, he said that the Bill of Rights did not include an exhaustive statement of human rights standards, given the considerable reservations expressed by the public regarding that instrument. The Government had focused on those aspects which had had the best chance of being enacted into law. Language had not been included among the potential areas of discrimination because to have done so would have established the equality of all of the many languages spoken in his country, a step which would not have received adequate public support.

11. With regard to discrimination in employment, he noted that all Governments exercised some discretion as to which individuals were employed to maintain national security. In the case of personnel employed outside New Zealand, Governments must endeavour to ensure that the personnel assigned to diplomatic missions abroad would observe local laws. Moreover, since standards differed from country to country, an employer could not be required by law to ensure equal hiring standards for employment overseas where a foreign legal system prevailed.

12. In reply to Mr. Klein's questions regarding section 5 of the Bill of Rights Act, he said that while theoretically it might be possible to use that section to justify a limitation of rights under section 20 of the Human Rights Act 1993 and, by reference, under article 27 of the Covenant, on the grounds that the limitation was justified by the requirements of a free and democratic society,

it was essential to read section 5 in the context of section 6, which instructed the courts to give preference to a meaning consistent with the Bill of Rights and the Covenant. The intent of the limits implied in section 5 of the Bill of Rights Act was to narrow what New Zealand deemed to be unreasonably broad exemptions in the covenants themselves. Similarly, if an issue of proportionality arose between freedoms and rights that were in conflict at any given time, the meaning set out in section 6 of the Bill of Rights would apply.

13. As to whether any mechanism for conducting periodic reviews of the Bill of Rights and ensuring its consistency with the Covenant was in place, New Zealand reported almost every year to one of the various human rights treaty bodies, and each such appearance afforded an occasion to review the Bill of Rights and take stock of its compatibility with the human rights instrument in question. Since the International Covenant on Civil and Political Rights was the instrument encompassing the widest range of rights, the ongoing reporting process under that instrument provided for a fairly thorough review.

14. The issue of exhaustion of local remedies did not really arise in New Zealand because there was no possibility of appeal. The courts must accept the laws as they stood and did not have the capacity to challenge a statutory provision in any way. The new procedure introduced in section 7 of the Bill of Rights, allowing the Attorney-General's Office to alert the Legislature to a bill's inconsistency with the Bill of Rights did not alter that unavailability of local remedy, although it would give greater transparency to the legal issues involved, so that instances of further remedy, such as the Committee, would be in a better position to deal with cases brought to them.

15. The New Zealand Human Rights Commission and the Attorney-General clearly had different roles, a situation which enhanced the likelihood of public debate on controversial issues. The Commission, a non-political agency, had the duty to inquire into problems relating to laws and regulations, while the Attorney-General, a law officer with his own independent responsibilities, performed the political function of reporting to Parliament and the Prime Minister.

16. His delegation had requested the Government for further details so that it could properly answer the questions about human rights in Tokelau.

17. There was no reason why a representative of the New Zealand Human Rights Commission could not be a member of the delegation reporting to the Committee, as had sometimes been the case when his Government reported to other human rights bodies.

18. Mr. BÁN said that paragraph 26 (e) of the report stated that the remedies provided under the Human Rights Act 1993 and the Employments Contract Act 1991 for sexual harassment were alternative and a choice must be made by the complainant of one or the other. More information would be appreciated on the differences between the remedies and how a choice was made. The reporting State should inform the Committee how women of a modest cultural background, for example, were assisted in choosing between the two remedies.

Right to life, treatment of prisoners and other detainees, liberty and security of the person and right to a fair trial (articles 6, 7, 9, 10 and 14) (section II of the list of issues)

19. The CHAIRMAN read out section II of the list of issues, namely: (a) measures taken to reduce the high post-natal mortality among Maori and the effectiveness of those measures in reducing it since consideration of the second periodic report; (b) information on investigations by the Police Complaints Authority of alleged cases of mistreatment of persons or of violation of rules and regulations governing the use of weapons by the police and other forces; (c) clarification of the evidence that was relevant in determining whether an offender was likely to repeat an offence of sexual violation, the standard of proof that applied and the compatibility of the provisions relating to preventive detention with articles 9 and 14 of the Covenant, particularly with respect to the presumption of innocence; (d) information on any measures taken to implement the recommendations contained in the report of the Ministerial Inquiry into Management Practices at Mangaroa Prison, and on whether the officers at Mangaroa prison responsible for the mistreatment of prisoners had been prosecuted under the Crimes of Torture Act; (e) information on the experience to date with the change of structure of prison sentences under the Criminal Justice Amendment Act (1987), concerning in particular the social rehabilitation of prisoners; (f) clarification as to whether the Penal Institutions Amendment Bill 1993 had been adopted and, if so, the compatibility of the proposed introduction of private contracting of prison management with the provisions of the Covenant, and the recourse available to prisoners who claimed that their rights had not been respected; (g) information on measures taken to address the remaining shortcomings with regard to the full implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners, and clarification as to whether the relevant regulations and directives, including the Criminal Justice Briefing Notes of the Department of Justice, were known and accessible to prisoners in English and Maori.

20. Mr. KEATING (New Zealand) said that it had been a matter of long-standing concern to his Government to reduce the infant mortality rate especially among Maori. It was encouraging that there had been a proportionately higher reduction among Maori (from 16.41 deaths per 1,000 live births in 1990 to 14.3 per 1,000 in 1993) as compared with non-Maori (7.4 per 1,000 to 6.5 per 1,000). A three-year work programme had been devised with specific goals for each phase of the Maori life-cycle: strengthening Maori family structures, improving their individual and collective well-being, enabling them to purchase and provide their own health-care services and promoting health care. There were also policy guidelines against child abuse. It was too early to tell how effective the services had been, but in setting them up the Government had consulted widely with the Maori themselves.

21. With regard to section II (b) of the list of issues, the Police Complaints Authority had, between 1989 and 1991, received 491 complaints against the use of force by the police and upheld 462, resulting in two prosecutions for assault and one conviction. Between 1992 and 1994, it had received 1,020 complaints and upheld 77 of them. Since its establishment in 1989, the Authority had investigated three incidences of death and four of serious bodily harm caused by police use of firearms, and had decided in favour of the police in all of the

former and two of the latter, with two still under review. The Authority's second and third annual reports had been provided to the Committee.

22. With regard to section II (c) of the list of issues, it should be borne in mind that paragraph 58 (a) of the report referred to the stage at which a court dealt with sentencing and not with the establishment of guilt, at which time the accused was to be presumed innocent. Section 75(3)(a) of the Criminal Justice Amendment Act governed the imposition of a sentence of preventive detention on persons convicted of sexual violation for the first time but deemed likely to commit a repeat offence: a court could only impose such a sentence if on the basis of a psychiatric report, it was satisfied that there existed a substantial risk that upon release the offender would again commit an offence such as sexual violation, incest, sodomy, attempted murder and the like. Preventive detention was not automatic in such cases, and it could never be imposed on offenders under 21 years of age. To determine the fitness of such a sentence in recent cases, the courts had considered, inter alia, medical evidence, the repetitive nature of the crime, the offender's proclivity or inability to control himself as established by evidence of past social deviancy, or the type of victim involved. The Court of Appeal had held that proof beyond a reasonable doubt was not required when determining the likelihood of recidivism in such cases; the court had only to deem the sentence expedient for the protection of the public.

23. With regard to section II (d), 48 of the 60 recommendations made by the independent commission of inquiry set up by the Government to investigate the practices at Mangaroa prison (para. 62) had been implemented, and the remainder would be implemented by year end. Departmental disciplinary proceedings had been brought: 17 officers had been suspended, 12 dismissed and 4 subsequently returned to duty with warnings. The Employment Tribunal, to which the dismissed officers had appealed, had ruled that 6 of the 12 dismissed must be reinstated (three with warnings), four should be allowed to resign and two should remain dismissed. Three officers had in fact returned to duty and one had been transferred. Upon recommendation of the New Zealand Human Rights Commission, the investigations had been referred to the police, whose inquiries were still under way.

24. With regard to section II (e), under the former Criminal Justice Act there had been a presumption for imprisonment of persons convicted of certain serious violent crimes. After the 1987 Amendment to the Criminal Justice Act had come into force (para. 58), the number of sentences of imprisonment for such crimes had risen steadily since 1989, reaching a peak in 1993 and declining thereafter, as indicated in the separate data that had been provided to the Committee. That Amendment had also lengthened the time spent in prison for certain violent crimes, so that offenders were released on parole only after serving two thirds rather than one half of their sentences.

25. To deal with violent offenders, new prison systems had been introduced in the late 1980s: under the unit management system, offenders were accommodated in small units which interacted directly with the prison staff; under the case management system, programmes and services were planned to ensure humane treatment and an effective return to the community, the primary concern being to reduce the likelihood of recidivism. Under the 1993 Amendment to the Criminal Justice Act, violent offenders were also individually reassessed towards the end

of their sentences by a district prisons board or the parole board, which imposed special post-release conditions aimed at protecting others or at rehabilitating the prisoner through placement in special programmes.

26. As concerned section II (f), the Penal Institutions Amendment Bill had indeed been enacted on 1 March 1995. Section 41 (e) of the new Act provided that actions performed by penal and security staff should, for the purposes of the New Zealand Bill of Rights, be deemed to be actions performed by the executive branch of the Government, making all inmates subject to the guarantees of the Bill of Rights, which reflected those set out in the Covenant. Also, pursuant to the Penal Institutions Regulations, which had been amended to comply with the amended Act, the superintendent of every institution was required to see all prisoners as soon as possible after arrival and ensure that they understood the provisions of the new Act and Regulations, including the proper method of making complaints.

27. With reference to section II (g) of the list of issues and paragraph 61 of the report, it should be added that one argument for the mixing of adult and juvenile prisoners contrary to Rule 8 (d) of the United Nations Standard Minimum Rules for the Treatment of Prisoners was the impracticality of doing otherwise because of the smallness of the prisons and the distance between prisons in New Zealand, if prisoners were to be kept near their communities. The requirement for individual cells under Rule 9 (1) had been deemed inappropriate where the risks to some inmates could be reduced by having someone with them at all times and where the culture of a significant proportion of inmates supported group living.

28. In compliance with Rule 12 regarding sanitary installations, the large majority of New Zealand prison cells now had individual toilets as a result of the upgrading of prison facilities in recent years.

29. In accordance with Rule 69, all inmates could contribute to the development of a case management plan that addressed the causes of their offence and their effective reintegration into the community. Pursuant to Rule 82, inmates with a mental disorder could be transferred to a psychiatric institution managed by the health services. In addition, a number of units had been established in the prison system to provide treatment to those who were not eligible to be transferred but required support.

30. In accordance with Rule 88, the New Zealand Penal Institutions Regulations allowed the Secretary for Justice to designate any institution or part of an institution as a place where inmates awaiting trial were required to wear institutional clothing, if the Secretary considered that that would benefit the institution's security. At present, the only remand prisoners required to wear institutional clothing were those in the maximum security remand unit at Mt. Eden Prison, who were required to wear prison track suits for security reasons. Elsewhere, remand prisoners could wear prison clothing if they did not have suitable clothing of their own.

31. The revised prison service manual was based on a quality management approach that specified standards and procedures rather than giving instructions. The manual was readily available for all who wished to see it.

In addition, inmates could obtain any information available within the system unless it was restricted under the Official Information Act.

32. Mrs. EVATT said that she still had considerable concern about the practice of sentencing for preventive detention, which appeared to represent an additional punishment imposed on an inmate for something he might do in the future. The decision to impose preventive detention was based on opinions and assessments of probability, which was not a standard beyond reasonable doubt. It was very difficult to reconcile that practice with the provisions of the Covenant, particularly in respect of the presumption of innocence. The reporting State should indicate whether there was a specific appeal procedure for avoiding preventive detention.

33. With regard to the inquiries into police violations of rules, it would be interesting to learn whether prisoners whose rights had been violated had had recourse to remedies and, if so, what the results had been. She continued to be concerned about the application of the Standard Minimum Rules in New Zealand. It was gratifying to learn, however, that the Government was committed to improving prison standards in the various institutions, about which there had been some very adverse reports. The Committee would like to know whether prisoners had recourse to a prison ombudsman and appropriate remedies if their rights were violated in the private prisons. It would be useful to know whether there were any differences in the rights of prisoners held in private prisons and what mechanisms existed to ensure that minimum standards were respected by the management of those institutions.

34. Lastly, paragraph 45 of the report referred to a charge of "dealing in slaves". The reporting State should explain whether that was a common practice and how the rights and interests of the women involved could be protected.

35. Mrs. HIGGINS said that the use of the expression "preventive detention" in paragraph 58 (a) of the report was unusual in that it seemed to include the possibility of imposing an added indeterminate sentence based on the likelihood of recidivism. While she was aware of instances of repeat offences by sexual offenders following their release from prison, an indeterminate sentence of preventive detention might be imposed even on first-time offenders. That suggested that the purpose of imprisonment was essentially to remove persons indefinitely from circulation, on the basis of their initial offence. Accordingly, it would be useful to know whether it was possible to lodge an appeal against a sentence of preventive detention and whether such sentences were reviewed subsequently by psychiatrists and other specialists to determine if they were still appropriate. The offences listed included indecency with males and buggery, and she wished to know whether they related also to minors and whether such acts were currently prohibited under criminal law.

36. Mr. ANDO asked for further information on the functions of the Director of Mental Health (para. 50): it would be interesting to learn what his qualifications were and whether decisions taken by him were reviewed by a monitoring body composed of psychiatrists and lawyers. He also wished to know whether the relatives or guardians of mentally disturbed persons had recourse to the courts in such matters.

37. Paragraph 57 of the report stated that no person could be convicted of an offence committed between the ages of 10 and 13 unless at the time the offence was committed he had known that the conduct was "wrong or that it was contrary to law". The reporting State should indicate who decided whether a child knew that the conduct was wrong or contrary to law, how such a decision was taken and what remedies were available for victims of such offences.

38. Paragraph 80 of the report referred to the family group conference process in dealing with young offenders. Further information would be appreciated on the persons taking part in the process, the purpose of the conference and the role of the youth justice coordinator in instituting proceedings. The reporting State should also define what was meant by the phrase "unique identifiers" in paragraph 85 (xii) of the report.

39. Mr. BÁN requested additional information on the in-patient and out-patient treatment referred to in paragraph 50 of the report. It would be useful to know at what point the right to liberty as set forth in article 9 of the Covenant was restricted in the course of such treatment. The Committee also wished to know how often cases were reviewed after in-patient treatment was ordered and whether the review depended on the willingness of the patient concerned or was conducted as a matter of course.

40. According to paragraph 53 of the report, under the Children, Young Persons and their Families Act 1989, unless public interest required otherwise, criminal proceedings should not be instituted against a child or young person if there was an alternative means of dealing with the matter. He wished to know who decided on the alternative means and whether the decision was subject to recourse or an appeal by the young person or his parents or relatives. The reporting State should also indicate what alternative means were available and provide statistical data on the proportion of criminal proceedings instituted against young people and the application of alternative means.

41. Mr. FRANCIS asked the reporting State to provide a breakdown of the prison population in New Zealand according to sex and age in its next report. Further information would also be appreciated on relations between inmates and prison guards in general, the ways in which incidents were handled and prison rehabilitation programmes in New Zealand.

42. Mr. KLEIN said that the New Zealand Bill of Rights seemed to cover only some of the articles of the Covenant. Under article 24 (g) of the Bill of Rights, everyone charged with an offence had the right to have the free assistance of an interpreter if the person could not understand or speak the langauge used in court. According to general comment 13 of the Committee, article 14 of the Covenant applied not only to procedures for the determination of criminal charges but also to procedures to determine their rights and obligations in a suit at law. The reporting State should therefore indicate whether the guarantee provided for in article 24 (g) of the Bill of Rights restricted the guarantee provided under article 14 of the Covenant.

43. Mr. El-Shafei (Vice-Chairman) took the Chair.

44. Mr. KEATING (New Zealand) said that under New Zealand's legislation the word "offence" applied to both minor and major offences. Accordingly, a minor offence would also be covered by the provision in article 24 (g) of the Bill of Rights.

45. The case of Asian women prostitutes who had been brought into the country illegally illustrated a situation that the police and immigration authorities had been concerned about for some time. In reply to Mrs. Evatt's question regarding measures taken to protect the individual, the primary focus of remedial action on the part of the authorities had been to prevent such individuals from being brought illegally into the country in the first place.

Freedom of movement and expulsion of aliens, right to privacy, freedom of assembly and association, right to participate in the conduct of public affairs and rights of persons belonging to minorities (articles 12, 13, 17, 21, 22, 25 and 27 of the Covenant) (section III of the list of issues)

46. The CHAIRMAN read out section III of the list of issues, namely: (a) information regarding New Zealand's experience to date in implementing the new procedures introduced in 1991 for determining refugee status, the number of applications for refugee status received each year and the impact of the new procedures on that number; (b) information on the functions and activities of the Privacy Commissioner (para. 87) and the date of entry into force and main provisions of the data privacy bill; (c) clarification of the inconsistency between section 121 of the Films, Video and Publications Classification Act 1993 and section 26 (1) of the New Zealand Bill of Rights Act 1990; (d) in view of the enactment of the Employment Contracts Act 1991, information as to whether the Government intended to review the reservation to article 22 of the Covenant and whether the new limitations on trade unions actions to protect member interests were compatible with article 22 of the Covenant; (e) information concerning specific difficulties encountered by Maori in the enjoyment of their rights under the Covenant; (f) the accomplishments to date of bodies devoted to providing Maori with greater educational, economic and political opportunities and data concerning the number and proportion of Maori in the public and private sectors; (g) information on how the Electoral Act protected the rights of Maori, women and minority groups to take part in public affairs and definition of the term "Maori option", used in connection with the new Electoral Act 1993; (h) information on the return of State and private land to Maori, the extent of the jurisdiction of the Waitangi Tribunal and the status of Tribunal determinations as compared with settlements reached through negotiations with the Minister of Justice.

47. Mr. KEATING (New Zealand), referring to section III (a), said that new procedures for determining refugee status had been introduced in 1991, a peak year for applications, which had risen from 27 in 1987 to 1,162 in 1991. Before 1991, owing to the relatively low number of cases, there had been an informal and flexible process for handling refugee status applications and no formal appeal procedures. Following the increase in the number of applications, it had been decided that new procedures were needed and that an official appeal process should be instituted. It was interesting to note that the caseload had dropped significantly since 1991 and had remained stable at about 300 to 400 applications per year.

48. Refugee status determinations were initially considered by the Refugee Status Section, which consisted of a team of full-time, specially trained immigration officers. Over the past four years, processing had become more streamlined, and it was not believed that there was a direct causal relationship between the decline in the number of applications and the new procedures. In fact, despite the existence of the Refugee Status Appeals Authority, approximately 18.4 per cent of all applicants reapplied after an initial application had been declined. To a large degree, the decision to reconsider an application was based on whether the circumstances in the country of origin had significantly changed since the time of the previous application.

49. Referring to section III (b), he said that the functions of the Privacy Commissioner were contained in section 13 of the Privacy Act 1993. The activities of the Privacy Commissioner were outlined in the Commissioner's first annual report, which covered the eight-month period prior to June 1993. During the period from June 1993 to December 1994, the Commissioner had received 934 complaints, 51 per cent of which had been access complaints and 115 had related to the Health Code. Access complaints usually involved a request to review a decision to withhold information under the Act. Of the 934 complaints received, 414 had been resolved, 39 were being considered outside the jurisdiction of the Privacy Commissioner and 374 were being given further consideration. The proposed data privacy legislation had been incorporated into the Privacy Act 1993, which also encompassed the Privacy Commissioner Act 1991.

50. With regard to section III (c), he said section 121 of the Films, Video and Publications Classification Act 1993 made it a criminal offence for any person to possess an "objectionable" publication, whether or not that publication had been so classified at the time it was found in the possession of the accused. It was no defence to prove that the defendant had had no knowledge or no reasonable cause to believe that the publication to which the charges related was objectionable. Section 26 (1) of the New Zealand Bill of Rights Act 1990 provided that no one would be liable to conviction for an offence on account of any act or omission that did not constitute an offence by that person under the law of New Zealand at the time it occurred. The inconsistency of section 121 of the Film Video and Publications Classification Act with section 26 (1) of the New Zealand Bill of Rights Act 1990 had been drawn to the attention of Parliament by the Attorney-General. However, Parliament had decided to enact the provision notwithstanding the advice of the Attorney-General.

51. Referring to section III (d), he said that the limitations on the action trade unions could take to protect the interests of their members were minimal. The freedoms provided by the Employment Contracts Act 1991 were underpinned by employee protections. All employees, and not just union members, had access to personal grievance and dispute settlement procedures. Other minimum conditions provided by legislation included minimum wage, equal pay for men and women, parental leave, annual and statutory holidays and wage protection provisions. Under that same Act, all employees had the right to decide whether they would belong to employee organizations such as unions. The Act also provided protection against undue influence and preference in employment in relation to membership or non-membership in a union or other employees' organization. Employers must recognize employees' authorized representatives, a provision which had been confirmed by several recent court cases which had held that if an

employer wished to negotiate an employment contract, he must do so through an authorized representative. Employees and their representatives, including trade unions, were required to agree to a procedure for ratification of any settlement negotiated by their representative.

52. The Employment Contracts Act also provided for the right to take industrial action, subject to certain restrictions. Industrial action relating to the negotiation of a collective employment contract was explicitly lawful. Industrial action was unlawful in the case of personal grievances and disputes, for which adequate procedures were already available to all employees through the employment tribunals. Strikes and lockouts concerned with the issue of whether a collective contract would bind more than one employer were unlawful; however, industrial action was lawful when it related to the content of a multi-employer contract. In general, limitations on the right of trade unions to act to protect their members were designed to balance employees' right to strike with employers' right not to face strike action and economic loss as a result of the actions of other employers over whom they had no control. In that connection, the Government did not intend to withdraw its reservation to article 22 of the Covenant.

53. In response to a formal complaint forwarded by the Council of Trade Unions of New Zealand in 1993 to the Freedom of Association Committee of the International Labour Organization (ILO), that Committee had issued an interim report in March 1994 which had included a request that the Government of New Zealand should accept a direct contact mission whose purpose was to obtain further information. A direct contact mission had visited New Zealand in September 1994, and the Freedom of Association Committee of ILO had issued its final report in November 1994. The report had included four recommendations, namely: (1) that the Government should keep it informed of any relevant legal decision; (2) that the Government should initiate and pursue tripartite discussions aimed at ensuring that the Employment Contracts Act was fully consistent with ILO principles on collective bargaining; (3) that workers and their organizations should be able to call for industrial action in support of multi-employer collective contracts; and (4) that the advisory services of ILO should be placed at the disposal of the Government of New Zealand. In response to those recommendations, the Government had invited the New Zealand Employers' Federation and the Council of Trade Unions to give their considered response to the final ILO report.

54. Under section III (e), he said that the Treaty of Waitangi continued to provide the focus for the evolving relationship between Maori and non-Maori in New Zealand. The Government had continued its efforts to ensure that the rights and concerns of Maori were accorded special attention, consistent with the Treaty, and it was committed to settling all major claims by the end of the century. Such efforts could be seen in the provisions of the Maori option under the new electoral reforms.

55. Under section III (f), he drew attention to paragraph 135 of the report and said that there were 819 Kohanga-Reo centres which provided intensive training for some 13,543 children in the Maori language. In 1993, 49 per cent of all Maori children in early childhood education had been enrolled in those centres. In the primary school system, there were 38 official Kura Kaupapa Maori

programmes, in which 2,622 students were enrolled. In 1994, 379 schools other than Kura Kaupapa Maori schools had offered some form of education using Maori, catering for almost 14 per cent of total Maori enrolment. In 115 of those schools, the language of instruction was Maori for more than 80 per cent of class-time. In general, the degree of immersion in both primary and secondary schools was between 30 and 50 per cent.

56. Since the enactment of the Maori Language Act 1987, recognition of the Maori language as an official language of New Zealand had increased considerably. That was particularly visible in the public sector, where a number of agencies provided information and advertised employment opportunities in both Maori and English. The year 1995 had been declared the year of the Maori language and was intended to focus national attention on the status of that language and encourage its learning and use in daily activities.

57. The new Museum of New Zealand would establish a Maori bicultural development directorate and would seek to avoid the marginalization of Maori art and history by organizing integrated exhibitions. A new national body, the Arts Council, with responsibility for setting overall policy in the arts and apportioning funds to support arts projects and individuals, had been established. The new structure was composed of two boards of equal status, one for Maori arts (to be known as Te Waka Toi) and the other to support the arts of all New Zealanders. The key purpose of the Arts Council was to promote the arts from all sources in New Zealand, while recognizing the cultural diversity of the country and role of the arts of the Maori and the Pacific Island peoples.

58. The Government had also provided substantial funds for Maori radio and television activities. With regard to the representation of Maori in the senior ranks of public service, the following data was available: 0.7 per cent in 1991, 1.1 per cent in 1992, 1.4 per cent in 1993 and 3.5 per cent in 1994. Since 1990, there had been four Maori members of Parliament holding the four seats reserved exclusively for Maori. In addition, during 1990-1991, one Maori member of Parliament had occupied a general seat, and during 1992-1995 there had been two Maori members of Parliament holding general seats.

59. Mr. Aguilar resumed the Chair.

The meeting rose at 6.05 p.m.

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HUMAN RIGHTS COMMITTEE

Fifty-third session

SUMMARY RECORD (PARTIAL*) OF THE 1395th MEETING

Held at Headquarters, New York,
on Friday, 24 March 1995, at 10 a.m.

Chairman: Mr. AGUILAR

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* No summary record was prepared for the rest of the meeting.

This record is subject to correction.

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95-80490 (E)

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of New Zealand (continued) (CCPR/C/64/Add.10; HRI/CORE/1/Add.33)

1. At the invitation of the Chairman, Mr. Keating, Mr. Rata and Ms. Rush (New Zealand) took places at the Committee table.

2. The CHAIRMAN invited the delegation of New Zealand to continue with its replies to questions previously asked by the members of the Committee.

3. Mr. KEATING (New Zealand) referred to a question in section III (g) of the list of issues, concerning the way in which the rights of Maori, women and minority groups were protected, and also concerning the term "Maori option" used in connection with the new Electoral Act 1993. He said that New Zealand's electoral system was about to undergo a fundamental change; proportional representation was to be introduced, probably with effect from the next election. One of the main reasons for the change was that the new system would improve the representation of Maori, women and minority groups.

4. The Maori option was not a new provision. Any voter of Maori descent had the option of enroling on either the general electoral roll or the Maori electoral roll. That choice, which was known as the Maori option, could be exercised when the voter first enrolled, and thereafter periodically, during the Maori option period, which occurred approximately once every five years. Those who opted to be on the Maori electoral roll were registered in Maori electoral districts. As a result of the new electoral system, the number of Maori representatives elected to Parliament was expected to be five, as opposed to four under the previous system.

5. Certain Maori groups had unsuccessfully sought to obtain a ruling in the High Court, and subsequently in the Court of Appeal, that the Government had not given sufficient publicity to the 1994 Maori option to Maori voters, and that the process should be rerun.

6. Referring to a question in section III (h) of the list of issues, concerning the return of state and private land to Maori, he said that, apart from occasional exceptions, private land was not generally available to the Crown for use in settlements. Almost all of the land available for settlement of claims was owned by the Crown itself, government departments, state-owned enterprises, and other state entities. In reply to a question regarding the jurisdiction of the Waitangi Tribunal, he said the latter had the power to make mandatory recommendations to the Crown on the return of certain categories of land. Claims could be settled through a process of direct negotiation, or through negotiation following a recommendation of the tribunal; claims settled through either process had exactly the same legal status.

7. There was also a statutory provision for the return to Maori, by special Order in Council, of certain lands which had been held by a state enterprise. Maori could apply to the Crown for the return of such lands when they were considered to be of special spiritual, cultural, or historical significance to them.

8. Mr. KRETZMER, referring to paragraph 107 of the report, concerning the prohibition of certain "objectionable" publications, expressed concern at the very broad definition of the meaning of the term "objectionable" contained in the Films, Videos and Publications Classification Act. That was particularly problematic in light of the provision, described in paragraph 108 of the report, that a person in possession of such a publication could be held liable even if that person had no knowledge or reasonable cause to believe that it was objectionable. He wondered whether in that case the right balance had been struck between freedom of expression and the legitimate need to control certain types of publication.

9. Referring to the provisions of the Human Rights Act 1993 relating to incitement to discrimination, he asked why there was no mention of advocacy of religious hatred, whereas article 20, paragraph 2, of the Covenant referred to advocacy of national, racial or religious hatred.

10. Referring to the provisions of the Covenant regarding freedom of expression, he requested additional information regarding the ownership of the press and electronic media in New Zealand.

11. Mr. ANDO, wondered whether any cases involving "objectionable" publications had come before the courts or had been brought to the attention of the public. He also asked whether there had been any developments in respect of the problem of freedom of expression described in paragraph 109 of the report.

12. He inquired whether the very restrictive attitude adopted towards certain types of publication reflected any particular trend in New Zealand society.

13. Mrs. EVATT requested additional information regarding the number of requests for refugee status that had been granted, whether any progress had been made in reducing the delays in processing applications and appeals, and whether any new legislation was planned on that subject.

14. She expressed concern regarding the provisions of the Films, Videos and Publications Classification Act, particularly in respect of the offence of possession of "objectionable" publications. It was a problem that raised important issues of freedom of expression.

15. She also expressed concern regarding the restriction on freedom of association involved in the prohibition of strikes intended to persuade more than one employer to take part in collective bargaining.

16. Mrs. HIGGINS, referring to the passage into law of the Privacy Act 1993, asked for confirmation that matters related to interference with personal privacy in the area of the printed word would be dealt with solely by means of the law on defamation. She also wondered whether it was generally felt in New

Zealand that the correct balance had been found between freedom of information and protection of privacy.

17. Mrs. MEDINA QUIROGA congratulated the New Zealand delegation for the quality of the report, as well as the enviable human rights situation in that country. However, regarding paragraph 108 of the report, she failed to understand how a person could be found guilty of an offence in the absence of any criminal intent.

18. Mr. PRADO VALLEJO asked whether the Government had any plans to simplify the formalities faced by persons seeking refugee status in New Zealand or attempting to avoid expulsion. He also wondered, with reference to the freedom of information, whether a decision to give or to withhold information could be made for political reasons or in order to protect the interests of members of government.

19. Mr. KEATING (New Zealand) said that his delegation had prepared some statistical information in response to questions asked at a previous meeting; that information was being distributed to members of the Committee.

20. Referring to the question asked by Mrs. Evatt regarding applications for refugee status, he recalled that the principal international obligation in that respect was that of non-refoulement. Applicants were well looked after during the time they spent in New Zealand, being provided with access to social services and the right to seek employment. Rapidity in processing applications should not be the only measure of performance; fast processing was a double-edged sword, since it could lead to a swift negative response.

21. Since the comparative data requested were not immediately available, they would be conveyed as soon as possible to members of the Committee, through the Secretariat. The long delays that had been mentioned were due to extraordinary growth in the number of applications during the period under review. However, the situation had improved somewhat since the early 1990s. The formalities could not have been significantly speeded up without an unacceptable lowering of staffing standards in the evaluation of applications.

22. Referring to the questions that had been raised regarding the prosecution of persons found in possession of offensive material, he said that the impetus for introducing strict legislation was not due to any repressive instinct to restrict freedom of expression, but rather from a desire on the part of women's groups and others wishing to prevent exploitation of the most vulnerable members of society, such as children. The issue was a sensitive one, and would clearly require further efforts in order for the right balance to be found between individual and group rights; the matter would be dealt with in greater detail in the next report.

23. Referring to Mrs. Higgins' question regarding the law of defamation, he said that the whole area had been under review, and a new Defamation Act had become law in 1993, as stated in paragraph 96 of the report. He was unable to give immediate answers to the question from Mr. Prado Vallejo regarding official information or to the question from Mr. Kretzmer regarding incitement to

religious hatred; he would endeavour to convey replies to the Committee at a later stage.

24. In response to Ms. Evatt's request for details on the Government's position concerning proposals for settlements under the Treaty of Waitangi, he said that $NZ 1 billion had been earmarked for the settlement of historical treaty-based claims during a period of approximately 10 years. Known as the "settlement financial envelope", it would be used as a budgetary tool of the Crown. The settlement envelope demonstrated the Crown's commitment to the settlement of historical claims. It took into account the fiscal and economic constraints which might exist at any particular time. Guidelines had been established in order to ensure that all claims were dealt with equitably relative to other claims and that the settlement of earlier claims did not deplete the funds available to settle subsequent claims. The Maori were not obligated to accept the settlement envelope or to institute claims immediately. Compensation for current or future breaches was not provided for under the Treaty; such cases must be dealt with according to normal legal practice.

25. As for whether the Government could impose a final settlement if the parties failed to reach a negotiated settlement, he said that the Crown was willing to act in good faith and recognized that some claimants would not wish to negotiate immediately. However, a cut-off date for the filing of claims would have to be fixed in consultation with claimant groups. He wished to assure Committee members that settlement of historical claims did not affect the status of the Treaty of Waitangi or the rights it enshrined, including the right to health services, education and welfare entitlements. Nor could the Crown request that proceeds of the settlement should be used to provide such services in lieu of the Government. While the settlement of claims must be full and final, it did not follow that that would result in the amendment or annulment of assertions made during the negotiations.

26. Replying to a question concerning the Treaty of Waitangi (Fisheries claims) Settlement Act, he said that full and final settlement of claims applied only to commercial fisheries and did not mean that no further domestic remedies would be available to the Maori. Individual and customary fishing rights had not been settled and were dealt with under a separate provision.

27. Replying to Mrs. Evatt's question as to whether the Human Rights Commission had conducted inquiries under the Human Rights Act 1993, he said that the Commission had completed an inquiry concerning the rights of elderly persons in long-term residential care, which it had launched on its own initiative. Concerning the question as to whether New Zealand social security legislation dealing with long-term residential care of the elderly was compatible with articles 2, 17 and 26 of the Covenant, he said that the Commission had just completed its examination and that its findings would be discussed in New Zealand's next periodic report.

28. Replying to a question raised by Mr. Prado Vallejo on the concept of indirect discrimination, he said that it was involved in section 65 of the Human Rights Act as a safety net provision in order to ensure that acts which had the effect of excluding certain groups but did not fall into the category of direct discrimination were investigated.

29. Turning to Mr. Lallah's question on administrative procedures and the operation of family courts under the Child Support Act 1991, he said that, where an application was made to the Inland Revenue Department Child Support Agency under the Child Support Act, liability was calculated according to specific formulas designed to ensure consistent standards. Where there was a voluntary agreement between the parents and a custodial parent was receiving a benefit, the formula must be assessed by the Agency. If the custodial parent was receiving a benefit, he or she would not receive child support paid by the liable parent unless the amount paid exceeded the amount of the benefit paid. In that case, only the excess amount was paid to the custodial parent. Recognizing that a generalized formula might not be adequate in all cases, the Agency allowed for a review of the amount payable. The review was undertaken by independent review officers and the person concerned could appeal the decision in the Family Court. Application for review could be made by either a qualifying custodian or a liable parent.

30. Replying to Mr. Kretzmer's question concerning guarantees or monitoring mechanisms in order to ensure that the exceptions referred to in section 25 of the Human Rights Act were not exploited or abused, he said that any person who believed that his or her employment rights had been exploited or abused as a result of those exceptions could apply to the Human Rights Commission for review. The exceptions had been included in the belief that it would be necessary to protect the national security.

31. Replying to the question concerning voting procedures in Tokelau and election processes unique to the island, he said that voting procedures and election processes reflected Tokelauan customs and traditions, not New Zealand electoral law, and that a number of electoral processes were unique to the island. Currently, two officials were elected on each island by universal adult suffrage on a triennial basis: the Faipule, who was the head of the island, and, at the national level, a Minister within the Council of Faipule and the Pulenuku, who was the equivalent of a village mayor. There was no nationwide voting in Tokelau and the 27 delegates to the General Fono were not elected.

32. The atoll or village was the main political unit; the concept of Tokalau as one political entity was still taking root. The atolls were at a great distance from each other and had developed different traditions and social orders. Thus, the method of appointing General Fono delegates differed from village to village. Generally, the process was managed by the Taupulega or village council, comprising male elders or family heads or both.

33. In response to Mr. Buergenthal's question concerning cases in which the Attorney-General's report under the New Zealand Bill of Rights Act 1990 had been overridden by Parliament, he referred to section 58A of the Transport Act authorizing police officers to administer random breath tests. It had been argued that section 58 A was inconsistent with sections 21 and 22 of the Bill of Rights Act, which guaranteed security from unreasonable search or seizure and arbitrary detention. In the light of the numerous deaths caused by alcohol-related accidents, a Parliamentary Select Committee and, later, Parliament as a whole, had determined that, notwithstanding the Attorney-General's report, such search and seizure was justified by public policy considerations.

34. Replying to Mr. Buergenthal's question on overlap in the reporting procedures of the New Zealand Human Rights Commission and the Attorney-General, he said that the fact that the Human Right Commission reported to the Prime Minister and the Attorney-General reported to Parliament on inconsistencies with the Bill of Rights Act had not caused any problem.

35. Replying to Mrs. Higgins' question, he said that a sentence of preventive detention could be appealed to a higher court under section 115 of the Summary Proceedings Act 1957 and section 383 of the Crimes Act 1961. A sentence of preventive detention carried a minimum statutory non-parole period of 10 years. After that time, it was considered by the Parole Board on the basis of certain criteria, for example the risk of a repeat offence. If parole was denied, the Parole Board would then have to consider the issue of release once a year. Under the Criminal Justice Act 1985, the detainee could request a review every six months.

36. Concerning remedies for alleged acts of abuse by prison officers or police, he said that most such cases involved damage to property, defamation, false arrest or false imprisonment. In only a few cases had remedies been sought for alleged police assault. The remedies available ranged from informal remedies such as a full apology and compensation for losses, for example, property loss or damage, to formal remedies available through civil proceedings in tort for trespass or false imprisonment, through an action for exemplary damages in tort or through a public law proceeding under the Bill of Rights Act. In most instances, remedies consisted of monetary compensation provided at the initiative of the police, as a result of a complaint submitted to the Police Complaints Authority, or as a result of civil proceedings.

37. Turning to a question asked by Mrs. Evatt concerning the situation of prisoners in private prisons, he said that, under section 41C of the Penal Institutions Act, for the purposes of the Ombudsmen Act and the Official Information Act, every contract penal institution was considered to be part of the Department of Justice. That guaranteed that prisoners in private prisons would have recourse to the Ombudsmen and the same rights as prisoners in public prisons. Contract-managed prisons must comply with the same statutory requirements as State-managed prisons, including the Human Rights Act, the Health and Safety in Employment Act and the Privacy Act. The observance of minimum standards in the private prisons was guaranteed by such mechanisms as prison inspectors' reports, access to the Ombudsmen and the monitoring of the contractor's compliance with judicial and legislative requirements.

38. The Penal Institutions Act set forth in detail the minimum content of a private prison contract. It required the performance standards of private prisons to be the same as those applicable to State prisons. The contractor must also undertake to comply with the relevant legislation, including the New Zealand Bill of Rights Act and the United Nations Standard Minimum Rules for the Treatment of Prisoners. The Minister of Justice was responsible for the administration of all prisons. The next periodic report would doubtless contain information on a major review of the Department of Justice currently under way. The review would have major implications for the administration of the prison system.

39. Concerning Mrs. Evatt's question about the trafficking in Asian women for the purposes of prostitution in New Zealand, he said that recent years had seen an increase in the number of foreign women who entered New Zealand on tourist visas and remained as sex workers. Currently, there were no specific measures in place for the protection of such women. The Government believed that their situation must be addressed. The legal proceedings and the conviction described in paragraph 45 of the report should act as a deterrent and should also encourage police and immigration authorities to investigate such cases.

40. Replying to Mr. Ando's question concerning the Mental Health (Compulsory Assessment and Treatment) Act 1992, he said that the Director of Mental Health was under the authority of the Minister and Director General of Health and was appointed by the Director-General of Health under the State Sector Act. The Mental Health Act did not specify qualifications for the post; however, he or she was generally expected to have experience in the field of mental health and to be a qualified health professional.

41. Addressing Mr. Bán's request for clarification on the distinction between in-patient and out-patient compulsory treatment, he said that compulsory assessment and treatment occurred either in a hospital or in the community. In-patient treatment was administered at a psychiatric hospital, within the psychiatric unit of a general hospital or in a general ward of a general hospital. In-patients were granted up to three months' leave, which could be extended. An in-patient order could be changed to a community treatment order by the patient's responsible clinician. Patients on community treatment orders could be treated at home or in a community facility. If they required in-patient treatment, they could be readmitted for assessment under section 11 of the Act. Under the Act, patients must be reviewed three months after a compulsory treatment order had been issued and every six months thereafter. The normal six-month compulsory treatment order could be extended for another six months by the Court, and indefinitely thereafter. The responsible clinician could release the patient from compulsory status at any time.

42. Replying to a question concerning the determination as to whether an offender between the ages of 10 and 13 years old knew that his or her conduct was wrong or contrary to law, he said that, under section 22 of the Crimes Act 1961 and section 272 of the Children, Young Persons, and Their Families Act 1989, a person between the ages of 10 and 14 years could be charged only with murder, manslaughter or a traffic offence not punishable by imprisonment. Knowledge of wrongdoing, where relevant, was determined by the High Court of New Zealand. In the past 20 years, there had been no judicial discussion bearing directly on the question. In the early 1990s, there had been one case in which a 13-year-old boy had been charged with murder and other cases in which young persons had been held responsible for such crimes as rape.

43. Responding to a question concerning the family group conference, he said that it was designed to bridge the cultural gap between the traditional Maori way of dealing with offences and the New Zealand system of justice. Under Section 251 of the Children, Young Persons, and Their Families Act, the family group conference was composed of the child; a parent, guardian or family member; the Youth Justice Coordinator of the region; the victim or victims and a legal representative of the child. In certain cases, it might also include a social

worker, a representative of the Iwi Authority (the Maori tribe); a probation officer; where a youth had been sentenced to perform community service, a representative of the organization to which he or she had been assigned; persons appointed by the High Court; and the police officer who had filed the complaint.

44. Replying to a request for clarification of the phrase "unless public interest requires otherwise" in relation to section 208 (a) of the Children, Young Persons, and Their Families Act (para. 53 of the report), he said that under the Act, family group conferences determined the most appropriate course of action for young persons dealt with under the youth justice provisions of the Act. A decision to institute criminal proceedings could result from such a conference; however, the final decision would rest with the police. Sections 3 and 4 of the Judicature Amendment Act 1972 provided for review of any statutory power of decision.

45. Responding to Mr Bán's question on the number of juveniles who had been apprehended and prosecuted, he said that for the years ending June 1993 and June 1994 the juvenile arrest figures were 37,853 and 41,303 respectively. The figures for juvenile prosecutions were not available, but at the year ending June 1994 a total of 36,802 young offenders had been dealt with by alternative means, for example, youth aid warnings and action plans, family group conferences, or simple warnings. Regarding Mr. Bán's question on paragraph 85 of the third periodic report, he explained that a "unique identifier" was a reference code assigned to an individual by an agency for the purposes of that agency, an example being an individual's taxpayer number. It was not permitted to use a person's name as a unique identifier.

46. With reference to paragraph 26 (e) of the report and the Committee's request for more information about the kind of guidance that was available in deciding whether to pursue remedies under the Human Rights Act 1993 or the Employments Contracts Act 1991, it was explained that the Department of Labour issued free information booklets on personal grievance procedures and that all employees had access to a free telephone service providing help and advice on their rights and obligations, including advice on the choice of procedures open to them in the event of a grievance. In addition, the Human Rights Commission's consultancy activities included workshops relating to sexual harassment awareness, investigation and prevention.

47. Mrs. EVATT reiterated that New Zealand had provided an almost model report, but again stressed some of the areas that still needed attention. She was particularly concerned about the inconsistencies between the Bill of Rights and the Covenant, and also the status of the Bill of Rights in New Zealand's legal hierarchy. The willingness of New Zealand Parliament to contemplate passing laws which might be inconsistent with the Bill of Rights also gave cause for concern, because when domestic law did not comply with the Bill of Rights or the Covenant it could not be challenged by citizens in the courts; in such circumstances the only remaining recourse appeared to be a communication to the Human Rights Committee. There also appeared to be a lack of general remedies for violations of the Covenant. Furthermore, the Committee would have appreciated more information about the way in which its decisions were used as legal guidelines.

48. She hoped the new electoral provisions would meet the needs of minorities as intended, and said that the same considerations applied to the Waitangi Tribunal. She urged the New Zealand Government to ensure that the new equal employment opportunities system was continuously monitored, and indicated that the problem of trafficking in women should be dealt with more effectively.

49. Mr. KRETZMER said that the grounds for discrimination, specifically with regard to discrimination on the basis of language, was a particular area of concern. He saw no necessary connection between the grounds for discrimination and the formal status of a language within the constitutional regime of a country, and urged the New Zealand Government to bring the grounds for discrimination mentioned in the Human Rights Act and the Bill of Rights into line with the grounds recognized by the Covenant. Such an approach would eliminate cases where an individual's ability or lack of ability to use a particular language could be viewed as a ground for discrimination unless knowledge of that language was a genuine requirement in applying for a job, for example.

50. On the issue of freedom of expression, he urged the New Zealand authorities to ensure that a genuine balance was being struck between the requirements of the Films, Videos, and Publications Classification Act 1993, which sought to control pornographic material, and the provisions of article 19 of the Covenant.

51. Mr. LALLAH, reiterating the concerns voiced by Mrs. Evatt, noted that the judiciary in New Zealand had been prevented from assessing the Bill of Rights as it would assess any other law. He was disappointed by the attitude displayed by the New Zealand public towards the power of the judiciary in that regard. He also repeated his earlier question about the practical steps that were being taken to ensure a suitable replacement for the Privy Council.

52. With regard to the settlement of Maori claims, he hoped that the New Zealand Government had contemplated providing constructive channels for the indigenous population's new-found liquidity.

53. Amplifying Mr. Kretzmer's point about freedom of expression, he suggested that the legal machinery that had been set up to control pornographic material was perhaps a little too rigid, establishing as it did a somewhat oracular view of what was and what was not objectionable. Furthermore, the law prevented courts from looking at the substance of a case to determine how objectionable its content actually was; appeals were limited to points of law. The law begged the question of different cultural attitudes to the material under consideration.

54. Mr. EL-SHAFEI said that he was still unclear as to how the New Zealand authorities intended to resolve any inconsistencies that arose between the Covenant and domestic law. He also restated his disappointment that the Human Rights Act, which was in any case not as comprehensive as the Covenant, had not been entrenched in New Zealand law. In addition, he expressed concern that the implementation of parts of the law dealing with the prohibition of discrimination on additional grounds which did not exist previously was to be postponed until 2000.

55. Lastly, he said that the Committee would have appreciated more positive information from New Zealand regarding the extent and scope of its reservations to the Covenant.

56. Mr. PRADO VALLEJO said he hoped the New Zealand authorities were devoting proper attention to the problem of refugees and foreigners who were subject to expulsion from New Zealand, and that the procedures involved would guarantee their fair treatment under the law.

57. He also asked the reporting State to clarify what it meant when it said that government ministers and their political status would be compromised in the event of their having to provide government-related information to citizens.

58. Finally, with regard to eliminating de facto discrimination against the Maori, he stressed that it was not enough for the Government simply to change laws, it had to put in place programmes designed to encourage the eradication of practices which were at variance with the provisions of the Covenant.

59. Mr. BUERGENTHAL noted that the more advanced the situation of human rights in a country, the more was expected, and the more probing the Committee's questions would be. No country would escape some degree of questioning, which was an important part of the dialogue process.

60. He shared the concerns expressed regarding the normative rank of the Covenant in New Zealand law. It was quite true that some countries gave the Covenant constitutional rank, yet systematically violated its provisions. However, he believed that if the Covenant had a higher rank in New Zealand domestic law, it would surely be observed, with the desired result. He was concerned about the absence of a reference to religion in the legislation implementing article 20 of the Covenant, as it might send an inaccurate message. He also associated himself with the concerns expressed regarding the Films, Videos and Publications Classification Act, which could be considered a retroactive penal law. The length of the post-conviction preventive detention period seemed disproportionate, even though he understood the effort to balance the rights of the individual with those of society. He also shared the concern regarding language discrimination, which was explicit not only in the Covenant but in the Charter of the United Nations.

61. New Zealand could boast of several laudable achievements in the area of human rights which should be recognized and emulated. Among them were the ratification of the first and second Optional Protocols to the Covenant and the participation of representatives of the High Commissioner for Human Rights in hearings to grant refugee status. The role of the Attorney-General and the Human Rights Commission regarding international human rights obligations was very important, and he was pleased at the possibility that a representative from the New Zealand Human Rights Commission could participate in the presentation of the fourth periodic report. The Committee could learn much from their experience.

62. Mr. KLEIN welcomed the constructive and positive dialogue which had taken place. He wished to stress, however, that the status of the Covenant and the Bill of Rights Act should be improved. Nothing prevented that change but

political conviction. In the end, however, he did not believe that the New Zealand Government held a different view of article 2 of the Covenant than that of the Committee, but it did perhaps hold a different view as to what was the best means for strengthening human rights within their system.

63. Mrs. MEDINA QUIROGA said that improving the situation of human rights was a never-ending task. Among remaining areas of concern, she noted the rank of the Covenant in domestic law and the decision not to specify further grounds for unlawful discrimination before the year 2000.

64. Freedom of expression was an important concept both in community life and for the observance of other human rights. Although she understood the tension between the protection of vulnerable groups, such as women and children, and individual rights, in her view it was the duty of a State not simply to react but to take positive action to protect rights. Out of concern for protecting one right, it was important not to infringe another, however. In her view, the definition of "objectionable" publications was too vague, making it possible for an individual easily to claim that he was unaware certain material was objectionable. Such a vague definition was poor protection for freedom of expression, nor did it give citizens a fair chance to know whether their conduct was criminal.

65. Mr. FRANCIS said that no report from a State party was likely to escape criticism; nevertheless, the reports and the replies to questions from the Committee unquestionably indicated New Zealand's fine record of compliance with international human rights instruments. The progress in New Zealand in the relationship with the Maori community was of special significance, especially in respect of the gender issue. He was certain that, in the preparation of the fourth periodic report, due account would be taken of the Committee's comments and concerns.

66. Mr. POCAR said that he had gained a positive impression of the New Zealand Government's approach to a continuing and constant review of the human rights situation in that country and its compliance with international agreements.

67. Mr. KEATING (New Zealand) thanked Committee members for their positive comments on the report. The New Zealand Government understood the Committee's expectations with respect to the protection of human rights and was constantly striving to improve.

68. He shared the concerns expressed by members. The proposal to give the covenant higher status in New Zealand law would only come about, however, when the public perceived some benefit from it. To the extent that loopholes in the Bill of Rights or the Covenant were perceived as shielding perversion and criminal activity, public scepticism about those instruments would remain. A dynamic tension existed between individual and collective rights, and his Government was constantly seeking to keep them in the proper balance.

69. The CHAIRMAN said that the Committee had thus concluded its consideration of the third periodic report of New Zealand.

70. Mr. Keating, Mr. Rata and Ms. Rush (New Zealand) withdrew.

The public part of the meeting rose at 12.45 p.m.

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HUMAN RIGHTS COMMITTEE

Fifty-third session

SUMMARY RECORD OF THE 1396th MEETING

Held at Headquarters, New York,
on Friday, 24 March 1995, 3 p.m.

Chairman: Mr. AGUILAR

later: Mr. EL-SHAFEI
(Vice-Chairman)

later: Mr. AGUILAR
(Chairman)

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Paraguay (continued) (CCPR/C/84/Add.3)

1. At the invitation of the Chairman, Mr. Caballero Gonzales, Mr. Fernandez Estigarribia, Mr. Salum Flecha and Miss Baiardi Quesnel (Paraguay) took places at the Committee table.

2. Mr. FERNANDEZ ESTIGARRIBIA (Paraguay), responding to the concerns raised by several Committee members with regard to the statement in paragraph 5 of the report (CCPR/C/84/Add.3) that the Constitution provided for the denunciation of international human rights treaties said that imprecise drafting of the report had been misleading: human rights treaties could only be denounced through a constitutionally approved procedure which was significantly more difficult to achieve than the text of the report indicated. He drew attention to paragraph 6 of the report, which stated that human rights treaties could be denounced only after a period of three years and on the initiative of one quarter of one of the chambers of Congress, or 30,000 voters or the President of the Republic. For approval, an absolute majority was required in both chambers, and not just in the initiating chamber, as the report incorrectly stated.

3. The 1992 Constitution had abolished the death penalty, although it still existed in the Penal Code, which dated back to 1914 and was currently under review. In addition, Paraguay supported international efforts to abolish the death penalty world wide.

4. Mr. CABALLERO GONZALES (Paraguay), replying to questions concerning the progress of investigations into the human rights violations committed by the Stroessner regime, said that archives, including the "Terror File", detailing the political repression during that time and containing microfilms of all relevant documents were available to anyone who wished to review them.

5. Mr. SALUM FLECHA (Paraguay) added that the "Terror File" had been used as evidence in several legal proceedings against military officials and police officers who had been found guilty of human rights violations. More than 25 such trials were currently in progress. A former police chief had recently been sentenced to 30 years in prison for his role in the deaths of young political activists. The public record of legal proceedings was available from the Department of Public Prosecutions. Unlike some Latin American countries, Paraguay had rejected proposals to issue a law on pardons demonstrating the political will of the Government to pursue prosecution of individuals responsible for human rights violations. Extradition proceedings had also been initiated against some former ministers of the Stroessner Government to force them to return to Paraguay and stand trial.

6. Mr. CABALLERO GONZALES (Paraguay) said that children born out of wedlock were equal before the law, as indicated in paragraph 47 of the report, and that while they were not entitled to inherit joint property accumulated during their

parents marriage, there was no restriction regarding their right to inherit the personal assets of either parent. With regard to de facto unions, article 120 of the Code of Civil Procedure stated that after a five-year period, a de facto union had full validity and was recognized as being tantamount to marriage.

7. In reply to questions about irregularities in the penitentiary system, he said that three draft penal codes were under review by the Congress which would form the basis for a reform of the Penal code. The 1992 Constitution had abolished the death penalty; in fact, no one had been sentenced to death in Paraguay since 1928. Since 1980, adultery had ceased to be considered a crime punishable by law.

8. Like the Penal Code, the penitentiary system was also undergoing reform. In order to address a shortage of prisons, the equivalent of $8 million had been allocated in the current fiscal year to build new prisons, find alternatives to incarcerating and introduce crime prevention measures. At present, minors were kept in separate buildings from adults, as were convicted criminals from individuals awaiting trial, but within the same facility. Past abuses of pre-trial detention had decreased, as judges now accepted the presumption of innocence set forth in article 17 of the new Constitution and minor crimes were no longer punishable by prison. Prison inmates were given the opportunity to meet with visiting judges without any prison officials being present. As a result of such visits, the Supreme Court had ruled that certain forms of solitary confinement should be abolished.

9. Under the law, minors under the age of 14 could not be tried and sentenced by the ordinary courts, but were subject to disciplinary measures to be decided upon by Juvenile Court judges. Recently, a programme for the rehabilitation of minors under the age of 14 had been introduced with the aid of certain foreign countries including Germany. If that programme proved to be successful, it could be extended to minors between the ages of 14 and 20, who were old enough to be prosecuted. With regard to minors testifying in court, the Code of Civil Procedure stipulated that minors aged 18 to 20 could testify in a court of law as witnesses, while those under the age of 18 could testify only to give ordinary information. Furthermore, minors aged 18 and above could testify regarding events that had taken place up to four years prior to the date of testimony. In reply to a question regarding compensation for victims of miscarriage of justice, he said that a new law providing for such compensation was soon to be issued.

10. Mr. SALUM FLECHA (Paraguay) noted that in certain cases, compensation was provided to victims at the time of sentencing. In one instance, Napoleon Ortegas, a well-known individual in Paraguay who had been imprisoned indefinitely by the Stroessner Government, had been appointed to a high post in the Ministry of Education and Worship. By that appointment the Government had sought to provide some compensation to an individual who had suffered extensively.

11. In the area of education, officials in the Ministry of Education and Worship had been working for the past three years on various programmes to make education in human rights part of the regular curriculum. Thousands of educators at the primary and secondary levels had been trained nationwide to

teach respect for human rights in the schools and to explain the Convention on the Rights of the Child. During the last fiscal year, 20 per cent of the national budget had been allocated for education, to provide new schools and supplies and to combat illiteracy in Paraguay by expanding education opportunities. As a result of educational reform in Paraguay, Guaraní, an official language of the country spoken by 85 per cent of the population, was now taught along with Spanish during the first three years of primary school. By conducting classes in both languages, primary school pupils gradually learned to read and write Spanish, which had helped to curtail the high drop-out rate at that level.

12. With regard to voting rights, all citizens over the age of 18 were eligible to vote in any election. Only those individuals who were enrolled in a police or military academy were not allowed to vote, a restriction that had been introduced to avoid such individuals from being subjected to pressure or manipulation in connection with their vote. Complaints lodged with human rights organizations about improper treatment of minors and adults by the police had led to a number of investigations of the police and to the release of certain individuals. Some police officers had been tried and sentenced, while others had been relieved of their duties. In any event, members of the police force in no way enjoyed impunity.

13. Complaints regarding electoral matters could be brought before special electoral tribunals, and a higher electoral tribunal was to be established as the court of final appeal for disputes concerning national and intra-party elections.

14. Turning to the question of Paraguay's indigenous population, he said that there were 17 recognized ethnic groups in the country, numbering approximately 100,000 persons. An entire chapter of the Constitution was devoted to their rights. Paraguay was one of the few that had ratified Convention 169 of the International Labour Organization concerning Indigenous and Tribal Peoples in Independent Countries, thereby providing its indigenous peoples with broad judicial guarantees. A government body was responsible for improving their access to education, protecting their cultural heritage and dealing with territorial matters.

15. The Ombudsman, who was a member of Parliament, was responsible primarily for defending human rights, appropriately channelling complaints and protecting community interests. Following a meeting of Latin American ombudsmen held in his country in 1994, a bill on the role of the Ombudsman had been further revised and was receiving favourable consideration in Parliament.

16. There were no legal restrictions on the press in his country, and many new radio stations and publications had come into existence since 1989.

17. Mr. CABALLERO GONZALEZ (Paraguay) said that the forced recruitment of minors was prohibited by law and that conscientious-objector status was easy to obtain and was guaranteed through the judicial process. All complaints of human rights violations would be investigated and, where appropriate, punishment would be meted out.

18. The Constitution stipulated which rights could be restricted upon such a declaration of a state of emergency. Congress must approve such a declaration within 48 hours, a measure which prevented improper action on the part of the executive branch, and Congress also had the power to lift the state of emergency. An individual who had been detained under a state of emergency could seek an executive order enabling him to leave the country.

19. Mr. SALUM FLECHA (Paraguay) added that departure in those circumstances in no way implied forced exile. No state of emergency had been declared since 1989, and the executive power was required by the Constitution to inform the Supreme Court of Justice of the status of any persons so detained.

20. With respect to the dissemination of information on international human rights instruments, many seminars and workshops had been held, publications had been issued and the school curriculum specifically focused on the Covenant, the Pact of San José and the Convention on the Rights of the Child.

21. A new penal code was being prepared in which harsher provisions were envisaged for crimes against the integrity and security of the person. The male progenitor was in fact punished in cases of abortion, particularly if the person involved was a close relative of the pregnant woman. Anyone who incited another person to commit suicide was liable to punishment.

22. The constitutional provision recognizing the role of the Roman Catholic Church was purely a declarative text intended to recognize the Church's role in the country's history, particularly in the light of its firm opposition to the military dictatorship. That recognition did not imply that the Church enjoyed any privileges or a status superior to that of other religions. In addition, it was no longer a requirement that the President must be a Roman Catholic.

23. Mr. CABALLERO GONZALEZ (Paraguay), referring to the transmission of nationality, said that under article 146, paragraph 3, of the Constitution, children who were born to a Paraguayan father or mother and who resided in Paraguay were deemed to be Paraguayan. As to the political rights of foreigners, they were entitled to vote only in municipal elections. No other restrictions of any kind were imposed on foreigners.

24. A far-reaching overhaul of the judicial, penal and prison systems was under way. For example, judges were being relieved of many administrative duties in order to speed up proceedings, steps were being taken to combat corruption among judges and to improve the monitoring of the judiciary, plans to establish a training institution for judges were being considered and an alternative dispute resolution system was under study. A key feature of the Constitution was that it was now possible to invoke habeas corpus before any court of first instance, whereas previously such a step had to be taken before the Supreme Court of Justice.

25. Mr. SALUM FLECHA (Paraguay) said that the new Labour Code established clear rules for the exercise of the constitutionally guaranteed freedom of association and freedom to establish trade unions, in keeping with the relevant international norms.

26. Mr. CABALLERO GONZALEZ (Paraguay) said that the constitutional provision establishing the irremovability of judges marked a significant improvement over earlier procedures. Judges were now appointed initially for a period of five years and, if confirmed for two terms following the term of appointment, were irremovable until retirement. Candidates for governor who were not natives of the department concerned must have resided there for at least five years.

27. Mr. SALUM FLECHA (Paraguay) said that a nationwide family planning and health programme under the auspices of the Ministry of Public Health and Social Welfare had been in operation for several years. Improved training and education regarding birth control had led to a decline in the number of abortions. The status of women in general had assumed increased priority, and considerable progress had been made in that area through the efforts of women's groups and non-governmental women's organizations and through changes in the civil code and the draft Penal Code, including harsher penalties for crimes against women.

28. As to the promotion and dissemination of human rights instruments, his country, with the assistance of the Centre for Human Rights, was elaborating a national plan covering all aspects of civil and political rights, with a view to establishing priorities, with the participation of all sectors, for the promotion and dissemination of human rights information, relevant education and the adaptation of domestic legislation to international human instruments.

29. Mr. CABALLERO GONZALEZ (Paraguay) said that judicial proceedings involving children from 10 to 14 years of age were intended to protect such minors rather than to pass judgement on them. He noted also that major revisions to the provisions of the Penal Code relating to homicide were being made. In no circumstances did military tribunals have jurisdiction in civil matters. The Supreme Court of Justice settled jurisdictional disputes between civil and military tribunals.

30. Mr. El-Shafei (Vice-Chairman) took the Chair.

31. Mr. FERNANDEZ ESTIGARRIBIA (Paraguay), replying to a question from Mrs. MEDINA QUIROGA, said that any move to denounce the Covenant would be pursued under article 290 of the Constitution, relating to amendments. There was no precedent in his country for such an action, since it had never ratified such a covenant before. No constitutional amendments were currently under consideration and any amendment would require the approval of an absolute majority of each chamber of Congress.

32. Mr. PRADO VALLEJO said that the replies given by the representatives of Paraguay had further clarified the human rights situation in that country. He was particularly pleased to note that the Covenant was now embodied in Paraguayan legislation, that the Constitutional had substantially enhanced the prospect for democracy and that the reporting State had made considerable progress in complying with its obligations under the Covenant.

33. Nevertheless, a few concerns persisted. He continued to believe that exaggerated pre-eminence was given to the Catholic Church and that, consequently, other religions might not be sufficiently protected. Adequate

steps must be taken to investigate violations of human rights committed during the military regime and to punish those who were guilty. Impunity must not be tolerated.

34. He also urged that firm action should be taken to ensure that amnesty would never be granted for gross violations of human rights. Furthermore, the Constitution was not sufficiently clear as to what provisions could not be derogated from under article 4 of the Covenant; legislation should be adopted to spell that out.

35. There seemed to be problems in practice with the legislation regarding conscientious objection and the possibility of performing alternative service, and the Government must see to it that the law was applied. Also, military officers must be controlled to prevent mistreatment of enlisted men, a subject of considerable complaint.

36. Mr. POCAR, complimenting the delegation on its serious, frank report and exchanges with the Committee, lauded Paraguay's efforts to extricate the country from the former system of dictatorship. It had submitted itself from the start to international scrutiny by acceding to international human rights instruments and accepting the jurisdiction of international machinery. He was confident that the Government would strive for further improvement, especially by amending the criminal codes. He welcomed the fact that Paraguay, unlike other Latin American countries, had refrained from adopting amnesty laws, for amnesty created a climate of impunity that could encourage continuing human rights violations and impede democracy. He was concerned, however, at information received from non-governmental organizations indicating that the Government was considering the passage of certain "soft" amnesty laws, and he hoped that that was only a rumour.

37. Mrs. MEDINA QUIROGA, noting the enormous progress the Government had made in building a solid democracy, observed that it was important to use the law to point the way for society. Yet under Paraguayan law, the status of women for instance, was anachronistic, and the distinctions established even in 1990 legislation on infanticide, rape and abortion were not up to international standards of equality. In those areas, the weight of the Catholic religion, which many believed enjoyed inordinate legal privileges in the country, made itself felt.

38. She was pleased that the use of pre-trial detention was on the decline owing to the implementation of article 17 of the new Constitution and recent legislation. The problem, however, would not be resolved so quickly, especially because there seemed to be a tradition in Latin America that a prisoner must suffer before being brought to trial.

39. The Government was to be commended for allocating such a large proportion of its budget to education and for resisting the declaration of an amnesty for crimes committed under the dictatorship.

40. Mr. ANDO said that some remaining points of concern for him were the issue of compensation for past human rights violations under the long dictatorship, the equality of spouses in marriage and divorce, and certain requisite reforms

of criminal procedure. More information was still needed on the use of Guarani in the criminal courts, and on the specific voting rights of aliens.

41. Obviously, a country and the minds of its people could not be changed overnight. An ongoing campaign had to be waged against illiteracy, but there must also be a more radical campaign to restructure the entire society, especially by redistributing the wealth. He was heartened by the good will of the delegation, and in Paraguay's second report it would become clear how far the country had gone in the positive direction upon which it had embarked.

42. Mrs. EVATT said that it was her strong impression that the Government had high ambitions to reform its laws and the energy to do so. Changes, however, must be achieved in practice, and time was needed to allow legislative change to penetrate.

43. Particularly praiseworthy were Paraguay's commitment to the prosecution of past human rights violations and the compensation of victims; its programme of human rights education, a genuine building for the future; its adoption of the new Constitution and its intention to accede to the second Optional Protocol; and its creation of a Human Rights Commission in the Chamber of Deputies itself, which helped establish responsibility for human rights squarely within the democratic process.

44. She associated herself with the remarks of Mrs. Medina Quiroga, especially with reference to the position of women and the need for reforming antiquated laws. Also, she was concerned about the restrictions on voting rights in Paraguay, even though article 25 of the Covenant did allow for reasonable restriction. If adequate provisions were made for secrecy of voting, such limitation would be unnecessary.

45. Mr. BÁN observed that the optimism of the report seemed to reflect a genuinely good human rights situation in the country, despite the difficulties of the transition to democracy. An excellent Constitution had been adopted, evincing a strong commitment to human rights. There also seemed to be a determination not to leave the massive human rights violations of the past unpunished and a willingness to educate the population in human rights.

46. Much legislation was still needed to ensure enjoyment of the rights guaranteed under the Constitution. That was his main concern and presumably also that of the Government. Laws were needed, for instance, to compensate victims of human rights violations; criminal laws regulating the death penalty, abolished under the Constitution, must be repealed. Criminal legislation must also be brought into line with the Constitution as regarded pre-trial detention, and with article 10 of the Covenant as regarded the lack of segregation in prisons between prisoners awaiting trial and convicted prisoners. Implementing legislation, too, must be adopted to establish a pluralistic media in the service of freedom of expression.

47. He looked forward to the next report indicating what progress had been made and containing further information on the actual situation in the country.

48. Mr. Aguilar resumed the Chair.

49. Mr. KLEIN observed that Paraguay must rid itself of an onerous legacy, a task that needed time and tremendous effort. The Government had to do everything possible to throw light on the past crimes of the dictatorship and it must educate the people and public officials in the understanding of human rights. Much had already been achieved: a new constitutional order had been established, based on the rule of law and on human rights, and the Covenant had been given high standing in that legal order.

50. The legislative foundation must, however, be made to stand the test of reality. The reform process in the country had not yet reversed all the de facto and sometimes de jure problems. Prison conditions must continue to be improved. Also, he hoped that the next report would address his concerns about the issue of bribery and corruption of judges and police officers. He had been interested to learn that minors could not be punished under criminal laws but only by disciplinary measures, which he considered to be a challenging new approach.

51. Mr. BUERGENTHAL said that the picture the report presented of the situation in Paraguay had been extremely encouraging, and the youthful enthusiasm of the delegation itself gave one hope for the future. Its openness about the problems in the country had been gratifying.

52. Paraguay had adopted an impressive Constitution and undertaken legislative reforms - all in less than six years. It was especially significant that Paraguay had ratified both the Covenant and the Optional Protocol and accepted the jurisdiction of the Inter-American Court of Human Rights, a signal that its Government was really serious. The country was in the process of restructuring and re-educating a whole society from top to bottom. He agreed with Mrs. Medina Quiroga that for such a society, just emerging from a dictatorship, nothing was as important in the long run as the educational effort.

53. He congratulated Paraguay for not having adopted an amnesty or any punto final legislation and for having resisted the temptation to sweep the past under the rug, something which never worked. It would be useful in the next report to devote more space to actual practice and less to the legislation. Nevertheless, the Government needed to establish a commission to review all its laws in the light of international standards.

54. Mr. KRETZMER said that he had been encouraged by the way in which Paraguay was making the transition to a democracy, and he commended its tremendous strides towards establishing institutions to protect human rights and comply with the provisions of the Covenant. He shared the concerns expressed by other members of the Committee concerning the status of women, penal procedure and the continued reports of human rights violations by members of the security forces and the police in Paraguay. It had been very interesting to learn about the training programmes for the security forces and the police, which were an essential mechanism for reducing human rights violations. In that regard, he stressed the need to set up institutional mechanisms for the immediate investigation of alleged violations and underscored the importance of publicizing the existence of those mechanisms so that all people in Paraguay would know that they could complain about abuses and that their complaints would be investigated in an effective manner.

55. Mr. FRANCIS commended the Government of Paraguay for its very encouraging initial report. In view of the country's stagnating economy, it was essential to improve per capita income in order to have surplus revenue for social services. The representatives Paraguay had indicated that instructors in the security forces could not vote in elections. The Government should take account of the fact that article 25 of the Covenant did not provide for such exceptions.

56. It was heartening to learn of the Government's commitment to instilling respect for human rights through education in the schools. The Committee had underscored the great importance of teaching programmes on human rights for the members of the security forces and the need to define clearly the spheres of competence of the various judicial bodies in view of the courts' essential role in ensuring observance of human rights. Lastly, it was gratifying to note that Paraguay would soon sign the second Optional Protocol to the Covenant.

57. Mr. CABALLERO GONZALEZ (Paraguay) said that his country would take account of all the recommendations made by the Committee. His Government had no intention of enacting an amnesty law and would continue its efforts to prosecute and punish those found guilty of human rights violations under the dictatorship. Paraguay intended to adapt all its legislation in order to comply with the provisions of the Covenant.

58. The CHAIRMAN expressed satisfaction with the frank and fruitful dialogue that had taken place with the delegation of Paraguay and said that the Committee had concluded its consideration of that country's initial report.

The meeting rose at 5.40 p.m.